TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 432

CHICAGO GREAT WESTERN RAILROAD COMPANY, PETITIONER,

vs.

A. D. SCHENDEL, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF EDMUND LUDWIG RING, DECEASED

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

PETITION FOR CERTIORARI FILED JUNE 3, 1925.

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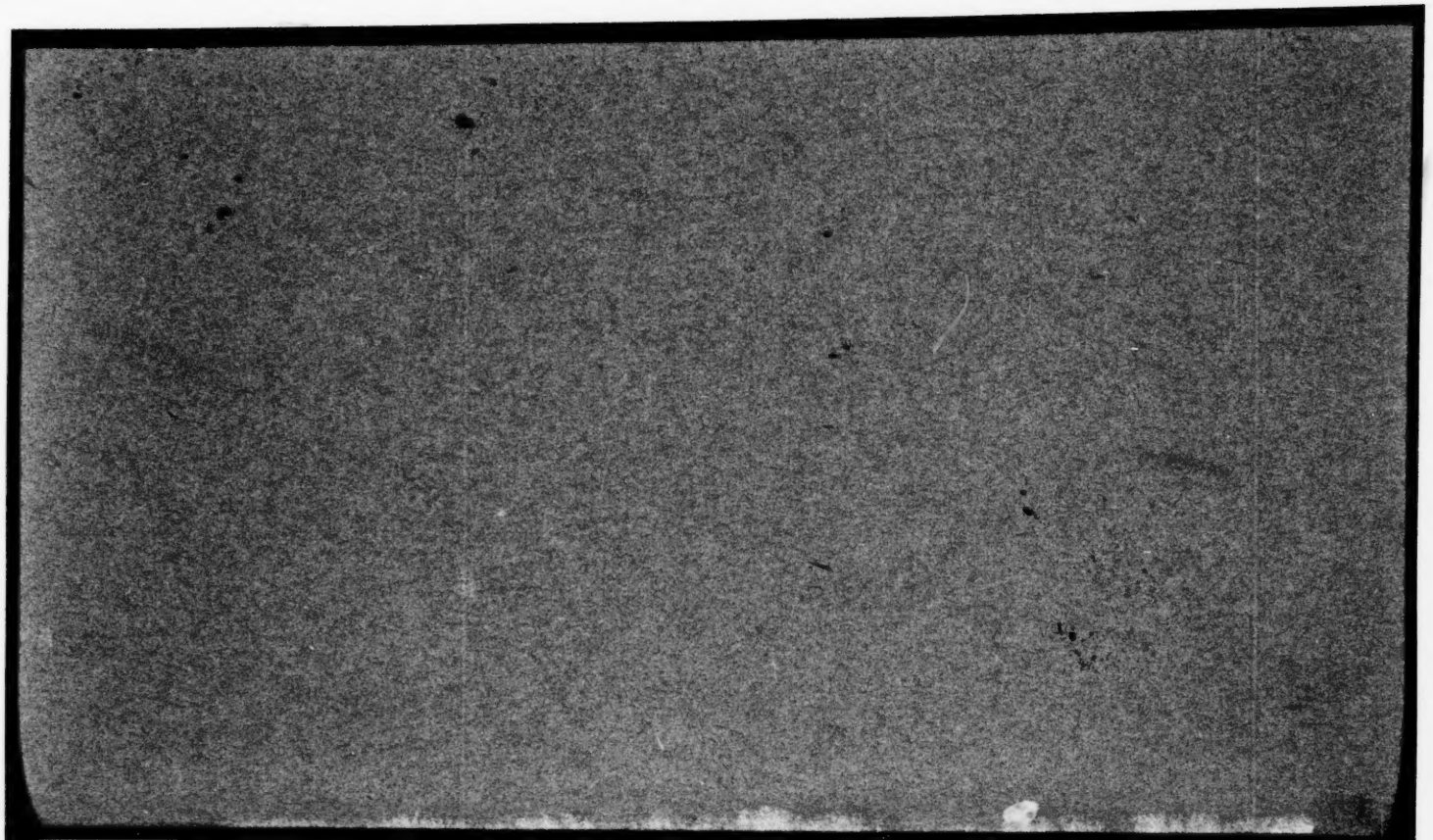

(30,385)

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INDEX

	Page
Record from district court of Yellow Medicine County	1
Complaint	1
Answer	6
Amended answer	6
Reply	8
Bill of exceptions	8
Argument of counsel	8
Testimony of J. P. O'Leary	9
Ada Gross	30
J. P. O'Leary (recalled)	40
Ottillie Ring	44
Argument of counsel	80
Testimony of J. P. O'Leary (recalled)	81
D. G. Fowler	82
W. A. Johnson	94
Frank Quist	98

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	Page
Testimony of G. C. McSperrin	126
A. R. Baldwin	128
John J. Melms	129
P. M. Raine	130
Marjorie Phillips	130
Mildred Kenney	139
Elizabeth Cahill	147
A. M. Pond	151
Charge of court to jury	169
Colloquy between court and counsel	178
Verdict	181
Statement re exhibits	182
Notice of proposed settled case	183
Stipulation re bill of exceptions	184
Order settling bill of exceptions	185
Alternative motion for judgment notwithstanding the verdict or for new trial and order overruling same	185
Notice of appeal	192
Bond on appeal	194
Proceedings in supreme court of Minnesota	196
Opinion, Wilson, J.	196
Mandate	206
Stipulation re entry of judgment in district court	206
Judgment	208
Notice of appeal	209
Bond on appeal	210
Stipulations	212
Judgment on appeal	214
Petition for stay and order thereon	215
Judgment	217
Clerk's certificate	218
Clerk's certificate (copy) (omitted in printing)	218½
Order allowing petition for certiorari	219

1

STATE OF MINNESOTA

SUPREME COURT.

STATE OF MINNESOTA, DISTRICT COURT,
COUNTY OF YELLOW MEDICINE.

2

A. D. SCHENDEL, as Special Administrator of the Estate of EDMUND LUDWIG RING, Deceased,

Plaintiff,

vs.

CHICAGO GREAT WESTERN RAILROAD COMPANY,

Defendant.

3

COMPLAINT.

Plaintiff, for a complaint in the above entitled action, alleges and shows to this court:

1st: That the defendant now is and at all times hereinafter mentioned has been a railroad corporation duly organized, existing and as such operating a commercial line of railroad and carrying freight and passegers thereon as a common carrier for hire, in the states of Iowa, Minnesota and other states.

2nd: That on or about the 19th day of October,
4 1922, the above named decedent, Edmund Ludwig Ring, died intestate and left him surviving his widow, Ottilia Ring, and his son, Leonard Edmund Ring; that thereafter and previous to the commencement of this action the above named plaintiff, A. D. Schendel, was by the Probate Court of Hennepin county, Minnesota, a court having jurisdiction, duly appointed as Special Administrator of the estate of said Edmund Ludwig Ring, decedent; and that said A. D. Schendel duly gave
5 bond as such Special Administrator, and in all things qualified as such, and is now the duly acting and qualified Special Administrator of said estate, and as such, brings this action for and in behalf of said Ottilia Ring and Leonard Edmund Ring aforesaid, both of whom were dependent upon the decedent for their care, support and maintenance at the time of his death.

3rd: That on and previous to the 4th day of October, 1922, the above named Edmund Ludwig
6 Ring was employed by the defendant as its agent and servant as a railroad freight brakeman, and as such railroad freight brakeman, it was his duty to be on, around and about the railroad freight cars of the defendant, and that he had such duties as are common to railroad freight brakemen generally.

4th: That at the time of the injuries to and the death of decedent, as herein alleged, the defendant was an interstate railroad and engaged in interstate commerce, and the decedent was working for

the defendant as its agent and servant, and as such was engaged in interstate commerce at said time.

5th: That on or about the 4th day of October, 1922, while decedent was employed as aforesaid, it became and was necessary for him, and it was his duty to act as a railroad freight brakeman on one of the railroad freight trains of the defendant running through the village of Budd, Iowa; that at said time defendant kept and maintained at said village of Budd, Iowa, certain main, house and side tracks, so-called, for its use as a common carrier of freight and passengers for hire; that on or about said 4th day of October, 1922, at about eight o'clock P. M., this decedent was employed in switching and moving certain railroad freight cars of the defendant in said yards, and in such switching operations it became and was necessary to uncouple certain cars, in order to carry out said switching movement; that at said time, and previous thereto, the defendant negligently, recklessly and carelessly, had, kept and maintained on one of the cars, which was so to be uncoupled, a certain draw bar, coupler and coupling apparatus which was broken, defective, unworkable and inoperative, and in such condition that said draw bar, coupler and coupling apparatus could not be operated and cars could not be caused to couple thereto, or uncouple therefrom, without the necessity of a person's going between the ends of said cars; that because of said car being so equipped with such broken, defective, unworkable and inoperative draw bar, coupler and coupling appar-

atus it became and was necessary for the said car
10 to be fastened by means of a chain to another car next adjacent to it in said train; that it became and was the duty of decedent to go between the cars of said train at the end of said car upon which said chain was so fastened, while said train was so in the yards of the defendant at said village of Budd, Iowa, and unloosen said chain so as to fasten, uncouple and disconnect the said cars, so that the said car, so equipped with said broken, unworkable and inoperative draw bar, coupler and
11 coupling apparatus might be removed from said train; and that while decedent was so attempting to unloosen, unfasten, disconnect and remove the said chain aforesaid, and while he was between the ends of said cars, the same came together, crushing him and causing such severe injuries that he died immediately thereafter.

6th: That previous to his death the decedent was an able-bodied man, well, strong, healthy and vigorous and could and did earn approximately
12 two hundred ($200.00) dollars per month; and that by reason of his death, damages have resulted to plaintiff, as the Special Administrator of the estate of said Edmund Ludwig Ring, deceased, in the sum of thirty-five thousand ($35,000.00) dollars, which said decedent would have contributed to his widow, Ottilia Ring, and to his child, Leonard Edmund Ring, had he not come to his untimely death, as hereinbefore set forth.

For a second and further cause of action herein plaintiff alleges and shows to this court:

1st: Plaintiff re-alleges each and every allegation, matter and thing contained in paragraphs 1st, 2nd, 3rd, 4th and 5th of plaintiff's first cause of action herein.

2nd: Plaintiff alleges that after the said decedent was so injured on the 4th day of October, 1922, he survived and was conscious for a period of approximately fifteen days; that during said time the said decedent suffered great and severe pain and agonies of both mind and body from the time of being so injured to the time of his death; and that by this action this plaintiff, as the Special Administrator of the estate of said decedent, seeks to recover for and in behalf of said Ottilia Ring and Leonard Edmund Ring, the sum of fifteen thousand ($15,000.00) dollars, as damages compensatory for the conscious pain and suffering to decedent from the time of said injuries to the time of his death.

Wherefore, plaintiff demands judgment for the sum of fifty thousand ($50,000.00) dollars, together with the costs and disbursements of this action.

PAUL D. STRATTON,
Plaintiff's Attorney,
Granite Falls, Minnesota.
DAVIS & MICHEL,
Plaintiff's Attorneys,
419 Metropolitan Bank Bldg.,
Minneapolis, Minnesota.

16

(Title of Cause.)

ANSWER.

Now comes the above named defendant and for its answer to the complaint of the plaintiff herein, denies each and every allegation, matter and thing therein contained, save and except as hereinafter specifically admitted.

Defendant admits that it is a corporation and a

17 common carrier of passengers and freight for hire.

Wherefore, defendant prays judgment that plaintiff take nothing by this action and that defendant have judgment for its costs and disbursements herein.

BRIGGS, WEYL & BRIGGS,
Attorneys for Defendant,
915 Merchants Bank Bldg.,
St. Paul, Minnesota.

18

(Title of Cause.)

AMENDED ANSWER.

Now comes the above named defendant and for its amended answer to the complaint herein, denies each and every allegation, matter and thing therein alleged, save and except as hereinafter specifically admitted.

Defendant admits that it is a corporation and a common carrier of passengers and freight for hire.

Further answering defendant alleges, that deceased, Edmund Ludwig Ring, was a man of average intelligence, thoroughly conversant with his duties and the property and equipment of the defendant. That all of the risks incident to his employment were open and obvious; that he selected whatever position he took and he himself determined where he should be and how he should perform his duties, and that if his death was the result of injury the same was due to and caused solely by his own negligent acts and omissions and because of risks which he assumed.

Wherefore defendant prays judgment that plaintiff take nothing by this action and that defendant have judgment for its costs and disbursements herein

BRIGGS, WEYL & BRIGGS,
Attorneys for Defendant,
915 Merchants Bank Bldg.,
St. Paul, Minnesota.

22 (Title of Cause.)

REPLY.

Plaintiff for his reply to the answer of the defendant in the above entitled action alleges and shows to this court:

Plaintiff denies each and every allegation and each and every part thereof in said answer contained except as the same admits the allegations contained in plaintiff's complaint.

23 Wherefore, plaintiff demands judgment as prayed for in said complaint.

Dated this 16th day of December, 1922.

DAVIS & MICHEL,
Plaintiff's Attorneys,
419 Metropolitan Bank Bldg.,
Minneapolis, Minnesota.

(Title of Cause.)

24

SETTLED CASE.

The above entitled action was called for trial on June 21, 1923, at the court house in the city of Granite Falls, Minnesota, before Hon. Harold Baker, J., and a jury.

Davis & Michel and Paul D. Stratton appeared for the plaintiff.

Briggs, Weyl & Briggs and B. O. Lee appeared for the defendant.

A jury of 12 was duly impaneled and sworn, and the opening statement on behalf of the plaintiff 25
made by Mr. Davis.

Mr. Briggs: I object to the reading of the complaint as improper.

Mr. Davis: Then I will not read it.

It is stipulated by and between the parties to the above entitled action that A. D. Schendel, of Hennepin county, Minnesota, is the duly appointed acting special administrator of the estate of Edmund Ludwig Ring, and that said Schendel is the plaintiff in this action. 26

Mr. Davis: The deposition of Mr. O'Leary, the conductor who was in charge of that train, was taken last January at St. Paul, and it is agreed to be read the same as though he were present and a witness in court, and it is testimony which the jury will have to take into consideration along with the other testimony in the case.

(Read to the jury as follows):

J. P. O'LEARY, 27

being first duly sworn on oath according to law, testified as follows, to-wit:

DIRECT EXAMINATION.

By Mr. Davis:

Q. State your full name.

A. J. P. O'Leary.

Q. Where do you live, Mr. O'Leary?

A. I live at 712 South Frederick street, Oelwein, Iowa.

Q. Are you employed by the Great Western
28 Railroad Company at that point?

A. Yes, sir.

Q. In what capacity are you employed by the Great Western?

A. Freight conductor.

Q. How long have you been a freight conductor?

A. A little over twenty years.

Q. What is your run?

A. I run between Oelwein, Iowa, and East
29 Stockton, Illinois.

Q. That is, you leave Oelwein, Iowa, on one end of the line and the other end of your line is East Stockton, Illinois?

A. Yes.

Q. And then there is a return trip you make?

A. Yes.

Q. And your train consists of freight shipments?

A. Yes.

30 Q. And express?

A. No express.

Q. And on the date in question, the fourth day of October, 1922, that was the date Mr. Ring was injured?

A. Yes, I believe it was.

Q. And were you then in charge of the freight train?

A. Yes, sir.

Q. From what point to what point?

A. From East Stockton to Oelwein.

Q. From East Stockton, Illinois, to Oelwein, Iowa? 31

A. Yes.

Q. And that train of which you were in charge was carrying freight from points outside of Iowa into Iowa?

A. Yes

Q. And the station of Budd, Iowa, did you arrive there at about eight o'clock in the evening?

A. About 7:30.

Q. About how many cars were in your train?

A. I don't remember the exact number. I think 32 about forty.

Q. Consisting of freight shipments?

A. Yes.

Q. Some loads and some empties?

A. I think nearly all loads.

Q. And Mr. O'Leary, when you got into Budd, or the siding at Budd, did you discover, or was it before that that you discovered a car with the draw-bar out?

A. That was before we got onto the sidetrack. 33

Q. And where did you discover this car with the draw-bar pulled out?

A. We stopped to head in at Budd to meet an east-bound train and in starting we pulled the draw-bar out.

Q. The draw-bar was pulled entirely out?

A. No; the timber was broken and it allowed it to pull out half way out.

Q. And when you discovered that what did you do?

A. I sent this brakeman Ring—the train stood

on a reverse curve at the time,—and I sent this
34 brakeman Ring, over to tell the head man to get where he could make signals as we would have to get chains and put them on and back up and pull it into the sidetrack.

Q. And after that what was done?

A. Well, we done that. We backed up and put the chain on this car and pulled the rear end of the train into the sidetrack.

Q. And did Ring act under your directions in helping to chain up the draw-bar of this car?

35 A. Yes, sir.

Q. And then you pulled it up on to the sidetrack?

A. Yes.

Q. After you did that, did you have any other work with regard to this draw-bar?

A. Yes. I told Ring and told the rear brakeman after we pulled the train in, we would switch it out of the train.

Q. And did Ring have anything to do with this
36 draw-bar after you got it into the sidetrack?

A. After we got on the sidetrack I was in the rear end of the train and Ring was up by this car that had the draw-bar out and I got out and walked up to a car length from where he was and I asked him if he could unhook the chain and he said he didn't know, and he set down his lantern and he tried and he couldn't do it.

Q. And then what happened?

A. And I told him to let me try, and I couldn't unhook it. It was a heavy chain and one

man couldn't handle it, and he climbed over the end of the car and got on the other side, so I was 37
on one side of the draw-bar and he was on the other, and he was facing the east and he reached down to lift up the chain to give the slack to me so I could pull the chain, and the train backed up.

Q. Did the train back up without giving you any signal?

A. Yes, sir.

Q. And what happened to Mr. Ring?

A. I straightened up and walked back with the movement of the train and he reached in and 38
locked his arms around the axle of this bad-order car and this chain at the time was slack in there and wasn't unhooked, and he swung his body up over the chain and held back and the slack ran back and squeezed him between the chain and the bottom of the draft-timbers of this car.

Q. Now, then, when this train jerked back, you and Ring were both in there trying to unhook this chain?

A. Yes. 39

Q. And no warning was given that the train was coming back?

A. No.

Q. And you were in charge of the train as conductor?

A. Yes, sir.

Q. And you gave no signal to back up?

A. No.

Q. Had you given any directions to them not to back up until you had unhooked the chain?

A. No.

Q. Did you notify the engineer or fireman that
40 you were going in there to unhook the chain?

A. No.

Q. Mr. Ring was working there under your directions?

A. No. He went in there on his own accord.

Q. Well, you were conductor of the train?

A. Yes.

Q. And he was working under you?

A. Yes, sir.

Q. And if he went in there to unhook the chain
41 before you moved the train it would be your duty to tell him to get out?

A. Yes, sir.

Q. And he was in there working with you and doing whatever you suggested he should do, wasn't he?

A. Yes.

Q. And you were his superior as conductor? He was your brakeman?

A. Yes, sir.

42 Q. And when this train moved back, did it move back suddenly?

A. No, it started slow and moved back.

Q. In what position was Mr. Ring when it started back? Was he in a position so he could get out at the start when the train moved backward?

A. My idea would be to get out of there.

Q. I understand, but he was over the chain?

A. Yes.

Q. And the train started to run back?

A. Yes.

Q. And then how far did that train move back?

A. Well, I judge it ran back a car length. 43

Q. About 40 or 42 feet?

A. Well, about forty feet.

Q. Yes. The average small car. And when it was moving about how fast was it moving back?

A. Not very fast. Probably, oh, as fast as a man would walk now. Probably two miles an hour I would say.

Q. Now, was Mr. Ring's feet on the ground as it was moving back, or off the ground?

A. Before he swung up on the chain they were 44 dragging on the ties.

Q. The movement of the train dragged his feet along on the ties?

A. No; that was after he locked his arms around the axle.

Q. And did he lock his arms around the axle about the time the train started?

A. Yes, sir.

Q. And then after that his feet were dragging along the ties? 45

A. Yes, sir.

Q. Then he reached further forward in order to raise himself?

A. No.

Q. Was that the way he was carried until the train stopped?

A. No.

Q. Well, then, when was his position changed?

A. He dragged a short distance and then swung his body up over the chain.

Q. His feet were dragging over the ties for a
46 short distance and then he swung his body up over the chain?

A. Yes. He put one leg up first and dragged himself up over the chain.

Q. The train was moving during all that time?

A. Yes, sir.

Q. And about how far had it moved when he swung his body over the chain?

A. Not very far. Just a short distance.

Q. And he was carried the balance of the dis-
47 tance until the train came to a stop?

A. Yes.

Q. And when it came to a stop the chain which was around this defective draw-bar came up with a snap?

A. Yes, sir.

Q. And that caught him about the center of the body, say the abdomen, or stomach or bowels?

A. Yes.

Q. And was the chain the thing that caught
48 him on the abdomen?

A. Yes.

Q. You understand the slack of the chain was in that shape (indicating a sagging position) and when it pulled out it straightened out.

Q. It pulled taut?

A. Yes.

Q. And that pulled against his abdomen?

A. Yes.

Q. Now, he was caught between the chain and what?

A. The bottom of the draw-bar.

Q. And that would be on his back?

A. Yes.

49

Q. So there were two things that caught his body?

A. Yes.

Q. First there would be the chain that came upon his abdomen—

A. Yes, as it pulled tight.

Q. —and the other would be what?

A. The bottom of the draft-timbers.

Q. Which would be a very heavy and substantial thing would be on his back?

50

A. Yes, sir.

Q. Then what happened?

A. Well, he hollered when the slack came up and then came the rebound after it drew up, by letting the slack come back, and he rolled off the chain.

Q. Between the two cars?

A. Yes, sir.

Q. Was the train moving then?

A. No.

51

Q. What did he then do?

A. I got over on the other side that he was on and got hold of him and I assisted him or helped him to the bank.

Q. What did he say?

A. He didn't say much. He kind of groaned or grunted.

Q. Was he in pain?

A. He was out of breath.

Q. Did he finish his run?

A. No.

Q. What was done with him?

52 A. I left him in charge of this brakeman, Quist, and I took the engine and went around to the rear end and switched the caboose out and this bad-order car and came out on the main line and put Ring in the caboose, and then I went to the telephone booth on the east side of the track and got train orders to take him back to Dubuque.

Q. How far were you from Dubuque?

A. I don't know just how far. Probably eight, ten or twelve miles.

53 Q. Now, this defective draw-bar—is that part of the safety appliance part of the train?

A. What?

Q. This defective draw-bar was part of the safety appliance part of the train, wasn't it? You know what that is.

A. Yes, it was.

Q. You are familiar with the general safety appliance requirements?

A. Yes.

54 Q. And this was one of them?

A. Yes.

Q. And this was in a defective condition when it broke out?

A. Yes, sir.

Q. And it was necessary in order to use it at all to chain it up?

A. It was necessary to put a chain on the car to move it.

Q. And when did you first discover this defective draw-bar?

A. When we started the train at Budd.

Q. Budd, Iowa? 55

A. Yes.

Q. And what direction was your train headed?

A. It was headed west.

Q. Were you ready to go out of Budd, and had you done any switching at Budd before you discovered it?

A. No.

Q. Did you have any switching to do there?

A. No.

Q. It was just a small station and you had no 56
switching to do there?

A. No.

Q. And were you pulling in on the main line when you first discovered it?

A. I was pulling in on the sidetrack for this east-bound train.

Q. And you discovered this before you got on to the sidetrack?

A. We stopped to open the switch to get on to the sidetrack and when we started the train part- 57
ed, and Ring and I went over to see what the trouble was and we found this draw-bar.

Q. You were on the main line then?

A. Yes.

Q. And it was chained up there?

A. Yes, on the main line.

Q. And it was your purpose after chaining it up to pull on to the sidetrack to let the east-bound train pass?

A. Yes, sir.

Q. And it was while you were moving this car
58 with the defective draw-bar that Mr. Ring was injured on the sidetrack?

A. Yes.

CROSS-EXAMINATION.

By Mr. Weyl:

(Read by Mr. Briggs):

Q. Was there anything wrong with your train up to the time that you stopped at Budd for the purpose of going on the sidetrack?

59 A. No.

Q. As I understand it, the reason you stopped on the main line at Budd was to throw the switch so you could go on to the passing track?

A. Yes.

Q. And up to that time what had been the apparent condition of this draw-bar?

A. It was in apparent good condition.

Q. There had been no trouble with it before that?

60 A. No.

Q. Then when your train started up to go on to the passing track what was it that indicated to you that there was some trouble on the train?

A. I heard the air go into emergency.

Q. Was that when you and Ring went to find out what the trouble was, immediately after?

A. Yes, sir.

Q. Now, up to that time did you have any chain —did you use this chain you have testified to, to hold any of the two cars together?

A. No, sir.

Q. Had the train broken in two when you started up to go on to the passing track?

61

A. Yes.

Q. And the engine and cars attached to it pulled away from the car that had the defective draw-bar?

A. Yes, sir.

Q. And what was the next movement of the train?

A. The next movement was to get a chain and put it on the draw-bar of the car that was attached to the engine—the last car that was attached to 62 the engine part of the train, and back up and chain it, and put the other end of the chain on to the bad-order car—that was the idea.

Q. And that was done?

A. Yes.

Q. And then the train moved where?

A. It moved from the point where the draw-bar was pulled out into the sidetrack.

Q. How much of a distance would you say that was?

63

A. Well, we will say it was fifty car lengths, maybe more or maybe less.

Q. When your train stopped for the first time was the engine close to the switch to the passing track?

A. Yes, it was close to the switch.

Q. Then the train when it was chained together, the engine was backed to that point again, was it?

A. Yes.

Q. And when you moved after the chaining of
64 the two cars together the engine simply moved from that point near the switch right on to the passing track with the rest of the train?

A. Yes, sir.

Q. Now, you have testified that after you got on to the passing track and the train stopped you attempted to unhook the chain?

A. Yes.

Q. What was the purpose of unhooking the chain at that time?

65 A. Because I couldn't take the car in the train further in that condition. I had to get it out of the train in some way, and that chain had to be unhooked to get it out of the train.

Q. And in order to get the car out of the train, what would be the movement of the engine in order to do so?

A. I figured on bringing her to the rear end and headed into the caboose.

Q. But to get the engine to the rear end of the
66 train it had to do what?

A. It had to be cut off and brought down the main line.

Q. And it had to be cut off and go on the passing track to the main line—

A. Yes.

Q. And then come back on the main line to pass the switch of the passing track?

A. Yes.

Q. Then throw the switch?

A. Yes.

Q. And the engine was moved then on to the passing track and hooked on to the caboose? 67

A. Yes.

Q. And then backed out to the main line again?

A. Yes.

Q. And then what would you have to do in order to complete this movement, if anything?

A. Well, here is the caboose here (indicating) We would go up and hook on to it. In order to get the bad-order car out you would have to unhook the chain that coupled it to the head of the train and pull it back and throw it out on the main 68 line—this bad-order car I mean.

Q. Then the engine would push the caboose and the other two or three cars attached to it back to the passing track and couple on to the rest of the train standing on the passing track?

A. Yes, then the train would be intact.

Q. And where was the bad-order car then?

A. That was left out on the main line track.

Q. Then what did you do with the bad-order car? 69

A. Set it in behind the caboose and leave it there.

Q. Now, I believe you have testified to it, but to make sure I will ask you this question: When you were going in to the chain to unhook it, to which you testified on Mr. Davis' direct examination that was the first thing to be done in order to get this bad-order car out of the train?

A. Unhook the chain, yes.

Q. And did you have any other object or purpose in mind at the time you were doing that?

A. No.

70 Q. Do I understand from your testimony, Mr. O'Leary, that at the time you were attempting to unhook this chain that the engine backed up?

A. Well, the train backed up.

Q. What other movement took place up above you don't know?

A. No.

Q. You don't know whether it was slack letting out or a movement on the part of the engine?

A. No.

71 Q. Now, when you assisted Mr. Ring out from between the cars, was he able to do anything for himself?

A. Yes, he made a good effort at getting out himself.

Q. And when you say you assisted him, just what did you do?

A. Well, I took hold of him. I got him under the arms and helped straighten him up and got hold of him and helped him walk out.

72 Q. Were you obliged to carry him?

A. No.

Q. Did he walk?

A. Yes.

Q. And when he got out from between the cars, what did he do then?

A. He rolled around on the ground for a while until he finally got his breath.

Q. Did that seem to be his difficulty at the time?

A. Yes.

Q. Trying to get his breath?

A. Yes. 73

Q. And aside from his trying to get his breath, what did you observe about him?

A. Nothing particular.

Q. And did he talk to you?

A. Yes. I asked him if he thought he was hurt bad.

Mr. Davis: I withdrew that at the time.

A. What was that?

Q. Did he talk to you?

A. Well, I asked him if he was hurt. 74

Q. What did he say?

A. Well, he said he didn't know.

Q. Well, after he went to the side of the right-of-way what did you then do?

A. About this time the other brakeman brought the engine down the main line and I left Ring in charge of Mr. Quist, and I took the engine and went to the rear end and did the switching.

Q. That is, the switching to get the caboose attached to the engine? 75

A. Yes.

Q. And did you also take the bad-order car out at the same time?

A. Yes.

Q. And then did Mr. Ring move from the place where he was to enter any part of the train?

A. Why, he moved when we got this switching done—he walked over and got into the caboose.

Q. And did you help him on to the caboose?

A. I think we did. I think we both had hold of him when he climbed up on the caboose.

Q. When he got into the caboose what did he
76 do?

A. We pulled a bunk down and he lay down on that.

Q. Was there any talk with him at that time?

A. No.

Q. Did you have any talk with him from that time until you got to Dubuque?

A. No.

Q. You went directly from there to Dubuque?

A. Yes.

77 Q. With just the caboose and bad-order car?

A. Yes, sir.

Q. Did he make any sound from the time you left Budd until you got to Dubuque?

A. No. He moved himself around on the bunk we fixed for him, but I didn't have any conversation with him.

RE-DIRECT EXAMINATION BY MR. DAVIS.

(Read by Mr. Davis):

78 Q. Were you in the caboose with him all the time from Budd to Dubuque?

A. Yes, sir.

Q. And had he said anything you could have heard it—you were right there with him?

A. Yes, sir.

Q. And was Mr. Quist there also in the caboose?

A. Yes.

Q. Anybody else?

A. No.

Q. And nothing was said by Mr. Ring while in the caboose?

A. I had no conversation with him.

Q. Did you hear him say anything from Budd to Dubuque? I understand you to say you didn't?

A. I didn't hear him say anything.

Q. And you were riding there in the caboose all the time with him?

A. Yes.

Q. And Mr. O'Leary, he was laying on the bunk —laying stretched out on the bunk?

A. Yes.

Q. And did he at times turn and twist while laying there?

A. Yes.

Q. And at times did he groan?

A. No.

Q. And did you notice his face there while he was laying and twisting in the bunk—its appearance?

A. No, it was dark.

Q. No light in the caboose?

A. Yes, on one end. He was on the other end.

Q. And did he have a pillow under him?

A. Yes, we had a cushion and an old coat.

Q. How long after he was injured did you and Mr. Quist help him into the caboose?

A. Oh, ten or fifteen minutes.

Q. And you both took hold of him as he got into the caboose?

A. Yes.

Q. He didn't get in himself?

A. He could have.

82 Mr. Davis: I didn't ask you that. I move that be stricken.

Q. You helped him—both of you helped him get into the caboose?

A. Yes.

Q. Both of you had hold of Mr. Ring?

A. Yes.

Q. And when this train backed up, how far back was this car that had the draw-bar pulled out, from the caboose?

83 A. It was ahead of the caboose, the fourth car.

Q. And how many cars between that and the engine?

A. I don't remember just how many we had, but if we had forty, it would be thirty-six.

Q. Now, your train had come to a stop before this backward movement?

A. Yes.

Q. And it had remained stopped for some time?

A. Yes.

84 Q. And when this backward movement started it constituted a movement of some forty feet?

A. Something like that.

Q. Now, you know the slack in the train wouldn't bring it that far?

A. Yes. I wouldn't imagine it would start of its own accord.

Q. And after a train has stopped for some time the slack moves out?

A. Well, that depends; sometimes it does and sometimes it doesn't.

Q. After a train has stopped for some length of

time then the slack has run out of the train as a rule? 85

A. Yes, sir.

Q. Now if a freight train comes to a stop it would be a very short time afterwards if any slack would have any effect—it would occur very shortly afterwards?

A. Yes.

Q. And Ring had been in there and you had been in there some time?

A. Yes.

Q. How long after the train had stopped did 86
this backward movement start? Was it five minutes—

A. No. While I walked four or five car-lengths.

Q. And Mr. Ring stepped in and tried to unhook it and you stepped in and tried to as well?

A. Yes.

Q. I will ask you from your practical experience as a railroad man from the nature of that movement, that it didn't occur immediately after 87
the train stopped, if you would not from that fact think it would have to be backward movement of the engine to go back forty feet—wouldn't you?

A. Well, yes.

Q. Did you afterwards have any talk with the engineer about backing the train up?

A. No.

Q. At any time?

A. No.

By Mr. Michel:

Q. That car that had the bad draw-bar, was
88 that Illinois Central car No. 200,549?

A. It was an Illinois Central car, but I do not have a recollection of the number. I had at the time but I haven't now.

Adjournment until 8 a. m. June 22, 1923.

Forenoon, session, June 22, 1923.

ADA GROSS,

was called as a witness on behalf of the plaintiff and duly sworn.

89

DIRECT EXAMINATION.

By Mr. Davis:

Q. Mrs. Gross, where do you live?

A. At Oelwein, Iowa.

Q. You are a sister of Mrs. Ring?

A. Yes, sir.

Q. And were you living in Oelwein, Iowa, in October, 1922, last year?

A. Yes, sir.

90 Q. Mrs. Gross, do you remember the time that Ed. Ring was hurt? Was you home in Oelwein when he was hurt?

A. Yes.

Q. And did you know him in his life time?

A. Yes, I did.

Q. And did you visit at his home?

A. Yes, I did.

Q. Mrs. Gross, when he came from the hospital at Dubuque to his home, was it on a Friday that he got home from Dubuque?

A. Yes, on Friday after he was hurt he came home from Dubuque.

91

Q. Were you at his home on that Friday?

A. Yes, I was.

Q. Did you see him there.

A. Yes, sir, I did.

Q. After he got hurt were you in his house?

A. Yes, I was.

Q. And was you there in the evening?

A. Yes.

Q. You may state to the jury whether or not you saw him?

92

A. Why, I seen him when he first came home from the train, and then later on in the evening I seen him when he was in bed.

Q. Was your sister at home with him then?

A. Yes.

Q. How late that first night did you stay at his home where Mr. Ring was?

A. Until one o'clock.

Q. Now during that night, I wish you would tell the jury what his condition was, what he did, if anything, and how he looked? Just tell the jury in your own language how he looked and what he did?

93

A. Why he was suffering pain, and he lay on the bed—

Mr. Briggs: I move to strike out his suffering pain as not responsive to the question.

Court: It may be stricken.

Q. Just state what he did, you can't state your conclusions, but what he did?

A. Why, he laid on the bed and put his hands

up to his side in that condition he would roll him-
94 self.

Q. He would roll himself?

A. Yes, he did.

Q. Did he groan at times?

A. Yes, he did.

Q. During the time you was there you say he would put his hands up to his side?

A. Yes, he did.

Q. Where did he put his hands?

A. Up like this (indicating), over his stomach.

95 Q. Abdomen?

A. Yes, sir.

Q. Did you notice whether or not he had any difficulty in getting his breath, in taking a deep breath?

A. It was very hard for him to breath.

Q. You stayed there that night until about one o'clock?

A. Yes, sir.

Q. And then you went home?

96 A. Yes.

Q. The next day would be Saturday, I believe?

A. Yes.

Q. Were you over there Saturday?

A. Yes, sir.

Q. With regard to his condition then, you may state whether he was up all the time you were there, or part of the time out of bed and part of the time in bed?

A. He was up an hour or so in the afternoon

Q. Of Saturday?

A. Yes, late in the afternoon.

Q. On Sunday did you see him? 97

A. Yes, I did.

Q. And did you see him Monday?

A. Yes, sir, I did.

Q. Now then on Monday night were you there?

A. Yes, sir, I was.

Q. How late were you there on Monday night?

A. I stayed there nearly every night until 12 and one o'clock.

Q. On Monday night did anything occur there in regard to his condition? 98

A. Yes, sir, he was very sick on Monday night, and started in to vomiting.

Q. Started in vomiting?

A. Yes, sir.

Q. From the time he got home on Friday up to Monday night you may state whether at the time that you were there he put his hands up to his side or in front of him, as you say?

A. Yes, he did.

Q. And showed pain. Was there any difference as to his— 99

Mr. Briggs: I object to the question "showing pain" and move to strike that part out.

Mr. Davis: We will consent it may be.

Q. On Monday night you say he vomited, what did he vomit?

A. He vomited bile mixed with blood.

Q. Bile mixed with blood?

A. Yes, sir.

Q. When he vomited you may state to the jury what he did in regard to where he put his hand.

You can't state what he said, you understand, Mrs. Gross, but just what he did?

100 A. He put his hand up to his—and he would vomit, and in doing that in order to throw the vomit he would lie on the edge of the bed, and he wouldn't be able to get himself on the pillow.

Q. Did he make any sounds as to whether or not he was having pain?

A. Yes, sir, he did.

Q. What did he do, just tell the jury?

A. Why, he would moan when he would vomit,

101 as if it would strain him, and it was so hard for him to get his breath.

Q. Did you see him on Tuesday evening?

A. Yes, sir, I did.

Q. Was his condition any better that day?

A. No, sir, it remained the same.

Q. Did you notice whether or not he vomited on Tuesday?

A. Yes, sir, he did, I seen the same thing on Tuesday several times.

102 Q. Were you helping your sister?

A. Yes, sir, I was.

Q. She had a little baby in the home about a year old, didn't she?

A. Yes, they had.

Q. Now Mrs. Gross, on Wednesday were you there?

A. Yes, I was.

Q. On Thursday?

A. I was.

Q. And Friday?

A. I was.

Q. He left on Friday did he not? 103

A. No, he left on Sunday.

Q. On Saturday were you there?

A. Yes.

Q. On Sunday he left did he?

A. Yes.

Q. Sunday morning?

A. Sunday noon.

Q. And then from Friday around to the next Friday—about nine days he was home there?

A. Yes, he was. 104

Q. Now then, from the time he started to vomit on Monday, vomit blood, Monday night, did his condition get worse as time went on?

A. Yes, sir, daily.

Q. And during the times you were there nights, say until you left at 12 or one o'clock, how did he sleep, if at all?

A. He did not sleep at all.

Q. What would he do?

A. Why he would roll on the bed, as he could 105 not get any rest.

Q. Could you tell from observing his condition and actions whether he was suffering any pain?

A. Why I—

Mr. Briggs: Yes or no.

Q. Could you tell from seeing him whether he was suffering pain?

A. Yes, sir, I could.

Q. Tell the jury what he did that indicated pain, just tell the jury?

A. Why he was sore and uncomfortable, I
106 could tell by looking at his face that he was suffering pain.

Q. What was there about his face that indicated that?

A. Why his face was drawn to an extent that I could tell that he was suffering pain.

Q. Did he toss about on the bed?

A. Yes, sir, he did.

Q. Did he direct you to different things there, different matters?

107 A. No, he didn't.

Q. Was he conscious all the time he was in the house?

A. Yes.

Q. And then he left on a Sunday?

A. Yes, sir, he did.

Q. And you never saw him after that?

A. No, I didn't.

Q. —alive?

A. No, I didn't see him alive.

108

CROSS-EXAMINATION.

By Mr. Briggs:

Q. Did you know whether Mr. Ring was out of his house after he came home until he went back to Dubuque?

A. Just outside?

Q. Well, outside of his house at all?

A. Yes, I think he was.

Q. When?

A. Well, probably on a Monday.

Q. Do you know what he did?

A. Why I don't think more than just walked around the house.

Q. Outside, you mean, of the house?

A. Yes.

Q. You don't know of his being outside except for that walk around the house?

A. No, not that I know of.

Q. Not that you know of?

A. No.

Q. Have you heard of his being out?

Mr. Davis: Objected to as immaterial and hearsay, and not proper cross-examination.

Court: Objection sustained.

Q. How long were you at his house on Sunday?

A. Why, I was there until midnight.

Q. From what time of day to midnight?

A. Yes.

Q. What time in the day did you go there?

A. Why I would go there different times in the day.

Q. What time of day did you go there Sunday?

A. Oh, I might have been there five—six times on Sunday, at different times.

Q. Well, how long did you stay each time?

A. Oh, probably half an hour, and when I would go there in the evening I would go there when I would get my work done in the evening, and I would stay until midnight.

Q. What time in the evening did you go?

A. Seven o'clock.

Q. And then you stayed until midnight?

A. Yes, sir.

Q. He was up and around the house during
112 the day?

A. Sunday?

Q. All those times, all those days?

A. Why, he was up a little while in the afternoon.

Q. Were you there so that you would know whether he was up other times or not?

A. Why I had been there several times and he was in bed.

Q. I know, but you weren't there all the time,
113 you don't know but what he was up a good deal of the time when you weren't there?

A. I was not there all the time, no, sir.

Q. How many hours of the day were you there?

A. Why I was there about five hours every evening, and I would think two—three hours during the day.

Q. How did he get home on that Friday?

A. On a train.

Q. Well, how did he come to the house?

114 A. In a taxi.

Q. Did some one help him into the house?

A. I think his wife was all.

Q. He walked into the house, didn't he?

A. Yes.

Q. In fact and don't you know, that he was out, even out riding, and out around town, after he came home?

A. No, sir, I do not know that.

Q. You don't know that?

A. No.

Q. What did you do for him there in the evening when you would stay until 12 or one o'clock? 115

A. For him?

Q. Yes.

A. Why I would assist my sister in caring for him.

Q. What did you do for him?

A. Well, there wasn't so much that I could do for him, I would hand him a drink of water when he would ask for it, or try to make him comfortable in any way that I could, or I would try to take care of the baby and let his wife do it. 116

Q. From Friday until the second Sunday you say you were there every night?

A. Yes, I was.

Q. Until late at night?

A. Yes, sir.

Q. And during the day time how much time did you spend there?

Mr. Davis: Objected to as repetition, she said she was there about two—three hours.

Court: She may answer. 117

A. I was there two—three hours during the day.

Q. Every day?

A. Yes, sir.

Q. Who else was there during that time?

A. I don't know, did you mean helping around?

Mr. Davis: No, he says who else was around there at the house observing the situation and conditions?

A. I couldn't say that.

Q. (Mr. Briggs) Who called upon him while
118 you were there?

A. I cannot recall.

Q. Did anybody?

A. Yes, I think he had callers.

Q. Well, did anybody call that you knew?

A. But as to my stating who called I cannot say.

Q. You knew their friends, didn't you?

A. Not all of them.

Q. You knew most of them?

119 A. I don't say that I did.

Q. A great many of them?

A. He knew lots of people that I never met.

Q. No, no, I mean a great many of their friends?

A. I don't know as that I did.

Q. Did anybody call during that period that you knew?

A. I cannot recall.

J. P. O'LEARY,

120 was called as a witness on behalf of the plaintiff and duly sworn.

DIRECT EXAMINATION.

By Mr. Davis:

Q. You remember testifying in a deposition last January in this case?

A. Yes, sir.

Q. You recollect testifying that you discovered this defective draw-bar at Budd, Iowa?

A. Yes, sir.

Q. And that the train went into emergency, and then after the train's going into emergency you went down and discovered the draw-bar pulled out? 121

A. Yes.

Q. Now then, when a train goes into emergency, what causes it to go into emergency?

A. The separating of the train, as in this case, would set the air in emergency.

Q. How far had the train separated when you got down there?

A. About 8 or 10 feet, maybe.

Q. In other words, when this draw-bar pulled out that would separate the train, cause the couplers to uncouple or come apart? 122

A. Yes, sir.

Q. Break the air-hose?

A. Yes, sir.

Q. And set the emergency?

A. Yes.

Q. And with this draw-bar pulled out as it was, the couplers couldn't operate, could they?

A. No, sir. 123

Q. And in order to do anything with them you would have to chain it up?

A. Yes.

CROSS-EXAMINATION.

By Mr. Briggs:

Q. Mr. Davis asked you when you first discovered this draw-bar was defective; how far had this draw-bar gone in that train before it broke?

A. I haven't got my book with me, but I think

I picked the car up in East Dubuque, that would
121 be about 15 miles.

Q. And the train had gone to Budd?

A. Yes, sir.

Q. What causes those breaks?

A. Well, a sudden jerk will often pull a draw-bar.

Q. Does a long train have anything to do with breaking draw-bars?

A. Well, they break with both long and short trains.

125 Q. I understand, but is there more breaking on long trains?

A. I wouldn't say that there would be more apt to break in a long train than a short train.

Q. Is there more of a jerk on a long train as they take up slack?

A. Yes, sir.

Q. You had stopped the train, you say, and switched to go on the passing track?

A. Yes, sir.

126 Q. At that time your train was intact, everything so far as you knew was all right?

A. Yes.

Q. And then when the train started up to go onto the passing track this break occurred?

A. Yes.

Q. In starting the train?

A. Yes, sir.

By Mr. Davis:

Q. You do know that draw-bars pull out because there are defects in draw-bars, too, don't you?

A. I have found them.

Q. You do know that sometimes they are improperly fastened and that causes them to pull out, don't you? 127

Mr. Briggs: Objected to as not proper re-direct examination or proper examination of his own witness,—cross-examination.

Mr. Davis: Question withdrawn.

Q. Mr. O'Leary, a suggestion was made to you by counsel as to what causes draw-bars to pull out, whether a sudden jerk of the train; now I am going to ask, on this day in question there wasn't anything out of the ordinary in the operation of the train, was there? 128

A. No, sir.

Q. No negligent handling of the engine or train by the engineer that you know of, at the time the draw-bar pulled out?

A. Well, the engine slipped when he started.

Q. Where were you?

A. Back in the caboose.

Q. How long was the train? 129

A. I would say between 40 and 45 cars.

Q. Could you tell back in the caboose that the engine slipped, or is it what somebody told you?

A. I could tell.

Q. You could tell away back there?

A. Yes, sir.

Q. Now, then, did the air go into emergency then?

A. No.

Q. I see; the engine started and then you got out of the caboose; did you start up alone to the engine, or what?

A. What was that?

130 Q. Where were you when you heard the train go into emergency?

A. I was in the caboose.

Q. In the caboose when you heard it?

A. Yes.

Q. How far was this car with the defective draw-bar from the caboose?

A. I think it was the fourth car.

Q. From the caboose?

A. Yes, sir.

131 OTTILIE RING,

was called as a witness on behalf of plaintiff and duly sworn.

DIRECT EXAMINATION.

By Mr. Davis:

Q. Your name is Ottilie Ring?

A. Yes, sir.

Q. You are the wife of Edmund Ludwig Ring, who was killed by the Great Western?

132 A. Yes, sir.

Q. Mrs. Ring, when did you first learn that he was hurt?

A. On Thursday morning.

Q. Was that by phone or how?

A. His cousin told us.

Q. You were married to him, were you?

A. Yes.

Q. When were you married to him?

A. Right after he came back from France in 1919.

Q. What time in 1919?

A. In February. 133

Q. Now, Mrs. Ring, at the time of his injury and prior to that time, do you know what the general condition of his health was?

A. It was good.

Q. How tall a man was he?

A. About five foot eleven.

Q. About how much did he weigh?

A. About 170 pounds.

Q. I hand you Exhibits A and B and ask you if that is a photograph of your husband, that substantially shows his height and general appear- 134
ance?

A. Yes.

Mr. Davis: We offer in evidence Exhibits A and B.

Mr. Briggs: Objected to as incompetent, irrelevant and immaterial.

Q. How long before he died were those photographs taken, do you know about how long?

A. Why, the one with the baby, that was taken 135
about three months before he died, and the other one was taken when he came back from France.

Mr. Davis: We withdraw Exhibit A then, that is the first one.

Mr. Briggs: Same objection, and no sufficient foundation laid.

Court: Exhibit B may be admitted.

Q. I will ask you to look at Exhibit B and state whether or not as he appears there in this photograph, which was taken about three months before he died, whether that at the time of his

death he was substantially the same—looked of
136 the same appearance?

A. Yes, he did.

Q. Prior to his death had he been in good health?

A. He had.

Q. Now, Mrs. Ring, how old a man was he?

A. He was 28 years old.

Q. How long had he worked continuously for the Great Western?

A. Well, altogether I think he has worked for
137 them about 8-9 years.

Q. Part of the time he was away from Oelwein?

A. Yes.

Q. And in the army?

A. Yes.

Q. And then when he came back did he start up to work for the Great Western?

A. For a short time.

Q. Did he continue to work for them?

A. No, they didn't want to give him back his
138 work, so he had to find other work.

Q. And then starting in April, 1920, two years and a half before his death, did he work right along then for them?

A. Yes.

Q. What was his work?

A. He was a brakeman.

Q. Freight or passenger?

A. Freight.

Q. And do you know whether or not on his run he was away from home a part of the time?

A. Yes.

Q. About how much of the time would he be 139
away from home?

A. Oh, about half the time.

Q. During the time that he was away from home do you know where he slept, when he was away from home?

A. He slept in the caboose.

Mr. Briggs: I move to strike out the answer as not responsive.

Mr. Davis: We consent.

Court: It is not responsive. 140

Q. With regard to his meals,—did he ever tell you that he slept in the caboose?

A. Yes.

Mr. Briggs: I move to strike it out as an improper question, and object to the question on the ground that it is incompetent, irrelevant, immaterial, and improper to ask such a question, knowing that the witness does not know except by hearsay.

Court: Objection sustained. 141

Mr. Briggs: I wish to take exception to the asking of the question.

Q. Mrs. Ring, with regard to his meals when he was away from home, will you state to the jury if you did anything with regard to getting any meals for him to take along with him?

A. Why, I packed his lunch a part of the time, and the other part of the time he cooked in the caboose.

Q. He cooked in the caboose?

Mr. Briggs: I move to strike out the question
142 (answer) as necessarily hearsay and not responsive to the question, that he cooked in the caboose.

Mr. Davis: We consent to that.

Court: It may be stricken.

Q. Now, Mrs. Ring, during the time that he was working for the Great Western did you live in Oelwein?

A. Yes.

Q. You were married, you say, in 1919?

A. Yes, sir.

143 Q. And after your marriage was there a baby born?

A. Yes.

Q. Came to your home,—when was that baby born?

A. March 18, 1921.

Q. During the time of your married life, while you were living with him, do you know what his general habits were as to being a man that was saving and thrifty?

144 A. He was saving and his habits were good.

Q. During the time that you lived with him and at the time of his death, did you own a home or did you rent?

A. We rented a home.

Q. About how much a month did you pay for rent?

A. $20.

Q. During that time you may state whether or not your husband was the sole means of support and maintenance of yourself and baby?

A. He was.

Q. Was he the sole source of contribution to yourself and baby—for your home and your clothing and everything you got? 145

A. He was.

Q. Now, Mrs. Ring, during that time, did he contribute to you for groceries, meat, coal, gasoline, electricity, telephone, fruit, vegetables, butter and eggs?

A. Yes.

Q. Can you state to the jury approximately how much a month he contributed for that purpose? 146

A. About from $160 to $175.

Q. No, for just the household?

A. About $100.

Q. Now, then, did he contribute to you for your clothes, clothes for the baby, shoes, and wearing apparel, and did he also contribute for nurse's hire and doctor bill when the baby came?

A. Yes.

Q. About how much on the average, including the cost of the baby, clothes for yourself and the baby, would you say, for the past two years before his death, or two years and a half, did he contribute, about how much a month for that purpose? 147

A. About $15-20 a month.

Q. Now, then, did he give you any money for any purpose such as church work or anything else?

A. Yes.

Q. About how much did he give you and contribute to you for church work?

A. About $30 a year.

Q. Did you contribute this as a member of any
148 church for helping the church?

A. Yes.

Q. Was he a man who attended church with you?

A. Yes.

Q. Was he a man of good or bad habits?

A. Good habits.

Q. A man who smoked?

A. No.

Q. Or who drank, as far as you know?

149 A. No.

Q. What church did you attend?

A. Lutheran.

Q. Mrs. Ring, did he contribute anything for the baby at this time, for milk and such things?

A. Yes.

Q. Was it necessary to have any extra amount of milk for the baby?

A. Yes, I had to have extra milk.

Q. About how many extra quarts of milk would
150 you use a day for the baby?

A. About two quarts.

Q. What did that cost a quart?

A. About 12 cents.

Q. About how much on the average would the milk and cream bill be?

A. About $8 a month.

Q. During the time that he was working there I presume some months he would earn more than others?

A. Yes.

Q. And some months he would earn less because he would work less? 151

A. Yes.

Q. And when he was earning big wages you may state to the jury whether or not you saved or he gave you any money to save for your use and for the carrying on of the house, or not?

A. Yes, he did.

Q. Now, tell the jury approximately how much a month he would save out of his wages for different purposes, for the purpose of using it for yourself or for taking care of the house and yourself 152 and baby?

A. About $30 or $40 a month.

Q. Some months I presume he wouldn't be able to save that?

A. No, he would not.

Q. When the months would come where there was less wages would that money be used in taking care of the things that you would have to pay?

A. Yes.

Q. During that time from April, 1920, to June, 153 1926, did he contribute to the purchase of any furniture for the home?

A. Yes.

Q. You may state to the jury whether or not at that time he received back pay?

A. He did.

Q. How much?

A. About $1,200 or $1,300.

Q. And that money was contributed to the household expenses?

A. Yes.

154 Q. To the buying of furniture and such things as that?

A. Yes.

Q. And then I believe about a year later, 1921, the baby came?

A. Yes.

Q. Was there any extra expense in connection with that?

A. There was.

Q. Who contributed to and bore the expense of

155 the coming of the baby and taking care of it and nurse hire?

A. My husband.

Q. How much on the average did he contribute for the support, maintenance and care of yourself and baby per month?

A. All the way from $160 to $175 a month.

Q. Sometimes it would be more and sometimes less?

A. Yes.

156 Q. Now, then, Mrs. Ring, in addition to that did you have any money which you would use in pleasure or amusement of any kind?

A. Yes.

Q. Well, in what way, would you attend picture shows?

A. Well, we would go to a show once in a while, and once in a while when it was real warm he would hire a car and take the baby and I for a ride.

Q. You didn't own a car?

A. No, we couldn't afford it.

Q. During that time when you would have this little pleasure, would he contribute and supply money for that? 157

A. He would.

Q. Now, then, Mrs. Ring, during the time you lived with Mr. Ring and he was alive, what kind of a man was he as to staying home when he was there?

A. He always stayed home.

Q. What kind of a husband was he as to his actions and conduct in the home?

Mr. Briggs: Do you understand that that is the measure of damages in this case? 158

Mr. Davis: Only showing the nature of the man as to whether he was thrifty.

Mr. Briggs: Would that indicate thrift?

Mr. Davis: Yes, it would.

Mr. Briggs: That is the purpose of showing it, is it, to show thrift?

Mr. Davis: Yes, sir, and showing the general character of the man. Is there any objection to the question? 159

(Question read to the witness.)

A. It was good, it was very good.

Q. During the time that he was at home you may state whether or not he assisted you in taking care of the baby?

A. He did.

Q. Now, Mrs. Ring, you learned that he was injured on Thursday?

A. Yes.

Q. And that would be the 5th of October?

A. He was injured the night of the 4th, but I
160 didn't learn of the accident until on Thursday morning.

Q. That would be the 5th?

A. Yes.

Q. When you learned of that where were you?

A. At my home.

Q. At your home in Oelwein?

A. At my home in Oelwein.

Q. And Mrs. Ring, did you learn where he was?

A. He was in Dubuque in a hospital.

161 Q. And that was on a Thursday you learned that?

A. Yes.

Q. Did you phone Dubuque?

A. I did.

Q. Whom did you talk to there?

A. A nurse at the hospital.

Q. And did you inquire about his condition there?

A. I did.

162 Q. And the next day did he come to Oelwein?

A. Yes, he did.

Q. About what time did he arrive?

A. About a quarter of five.

Q. On a Friday?

A. Yes.

Q. Did you meet him at the train?

A. I did.

Q. When you met him at the train you may tell the jury whether there was any difference in his appearance then and at the time he left home—to go to work?

A. Yes, sir, there was, he was walking very slow and he was very stooped when he came home. 163

Q. How did he go from the train to his home?

A. In a taxi.

Q. And when he got home did you notice any change or anything about his condition that was out of the ordinary?

A. Yes, I did.

Q. Tell the jury what you noticed about your husband?

A. Why, when he came home he was tired, and he was in pain, he asked me to help him take his 164 clothes off and get him to bed.

Q. When you got him to bed did you notice anything about him, anything unusual?

A. Yes, he tossed himself in bed, and groaned when he came home and complained of having pain across his stomach.

Q. Did he place his hands on any part of his body?

A. Yes, he placed his hands on his stomach.

Q. In front? 165

A. Yes.

Q. Did you notice whether there were any bandages around him?

A. He had a piece of tape strapped across him.

Q. Describe that tape to the jury, how it extended over his body?

A. It was about five inches wide, it was placed about his side about half way.

Q. In front?

A. In about here (indicating).

Q. On one side?

A. Just on one side.

166 Q. Do you remember on what side it was?

A. I rather think it was the right side, if I am not mistaken.

Q. And that bandage was there when he got home from the hospital?

A. Yes.

Q. On that Friday, Mrs. Ring, did he stay in bed all the time, or did he get up a part of the time?

A. Well, as he came on Friday night, he was in bed Friday, you see.

167 Q. That Friday night with regard to his sleep and how he rested, did he sleep any?

A. No, he didn't.

Q. What was his condition, just tell the jury so they can arrive at his condition?

A. Well, he was in misery, he just couldn't sleep, he would toss on the bed and he would groan, and he tumbled, and he couldn't rest.

Q. What did you do, if anything, to try to relieve his pain?

168 A. Well, I would try and do everything I could, I would get hot water bottles and things like that, but it didn't help.

Q. Mrs. Ring, that night did you stay up most of the night?

A. Yes.

Q. The next day would be Saturday I believe?

A. Yes.

Q. With regard to his condition Saturday how was he, what was his condition then?

A. Well, he wasn't much better, and he was in

bed the biggest share of that day, he was up very little at a time.

169

Q. Did he get up a part of the time?

A. Very little.

Q. And Saturday night were you with him then?

A. Yes.

Q. With regard to his condition on Saturday night, I wish you would tell the jury how he slept and what he did?

A. Why, he didn't sleep, he couldn't sleep, he was in pain and misery.

170

Q. And did you stay up with him?

Mr. Briggs: I move to strike out that he was in pain and misery as not responsive.

Mr. Davis: We consent.

Q. Did you stay up with him that night?

A. Why, I didn't stay up the fore part of the night because my sister stayed with him so I could get some rest.

Q. The later part of the night?

A. Yes, I was up with him after midnight.

171

Q. What, if anything, did you do for him that night?

A. Well, I gave him hot water bottles and things like that.

Q. Describe his actions, as to whether he would lay quietly in bed, or what he did?

A. No, he didn't, he would toss and he would roll and at times he would moan, and he couldn't lay still.

Q. Would he call for attention or help frequently?

A. Yes.

172 Q. During that night would he make any exclamations of pain?

A. Yes.

Q. Did he say anything to you as to where that pain was?

A. Yes.

Q. Where was it?

A. It was across his stomach.

Q. Did he place his hand on his stomach?

A. Yes, he had his hand on his stomach.

173 Q. Now Mrs. Ring, the next day was Sunday, and on that Sunday was he up a part of the day?

A. Yes, he was.

Q. You may state to the jury whether some of his railroad friends came and called on him?

A. Yes, he had quite a few of his friends that called on him on Sunday.

Q. Was he a man of cheerful disposition as a rule?

A. Yes, he was.

174 Q. And during the time on that Sunday did different railroad friends of his call to see him?

A. Yes.

Q. Do you recollect whether he went out that Sunday at all?

A. No, he didn't.

Q. Did he visit with them?

A. Yes.

Q. About how long would you say in all that they were there, those railroad men?

A. Well, they wouldn't stay longer than about half an hour.

Q. During the time that they were there did he try to be cheerful with them? 175

A. Yes.

Q. Now, then, Mrs. Ring, that night being Sunday night, how did he sleep that night?

A. He didn't sleep very much Sunday night, it was very little if any.

Q. Did you stay up with him that night?

A. A part of the night I did.

Q. What was his condition as to getting any better or worse as to tossing about, groaning and moaning? 176

A. That was no better.

Q. Did he toss about the same as the night before?

A. Yes.

Q. Monday morning arrived, and do you know if he went out for a ride on Monday?

A. Yes, he was.

Q. Who with?

A. His cousin.

Q. What is his name? 177

A. Quist.

Q. And he was a man that worked for the Great Western?

A. Yes.

Q. And is still working for them?

A. Yes.

Q. Do you know about how long he was out riding?

A. I don't think they were gone longer than half an hour.

Q. When he returned did he come into the house?

A. Yes.

178 Q. On that Monday night did you stay up with him?

A. Well, after supper time he told me he was going to bed, he didn't feel good, and he complained of having pains, and I helped him undress and he went to bed.

Q. Where did he complain of these pains?

A. Across his stomach.

Q. And did the pain that he complained of seem to be slight or intense?

179 A. Intense.

Q. You may state whether his face would be drawn or not?

A. It was.

Q. Mrs. Ring, during the night, Monday night, did anything out of the ordinary occur in regard to his condition?

A. Yes, about nine o'clock he started to vomit.

Q. What did he vomit?

A. Bile and blood.

180 Q. And about how much did he vomit the first time he vomited?

A. Well, I would judge about half a cupful to a cupful at a time.

Q. Now, Mrs. Ring, the next morning you may state whether or not you called a doctor?

A. I called a doctor Tuesday.

Q. What doctor did you call?

A. I called Dr. Wassem.

Q. You may state whether or not you informed him of his having vomited blood?

A. I did, I told him.

Q. And that was on Tuesday?

A. That was on Tuesday. 181

Q. On that Tuesday did his condition grow better or worse?

A. It got worse.

Q. Did he get up at all on Tuesday?

A. No, he didn't.

Q. He remained in bed all day?

A. Yes.

Q. Tuesday night arrived, what was his condition then?

A. His condition was very bad. 182

Q. What did he do?

A. Well, he would vomit, and he would lie in bed and he would ask me if I couldn't do something to relieve his pain.

Q. Wesdnesday arrived, did the doctor call again that day?

A. Wednesday I called Dr. Ward, the company doctor.

Q. Now, then, on Wednesday night did he sleep any at all that you know of? 183

A. No, not that I know of.

Q. Were you up most of the night with him?

A. I was.

Q. Thursday arrived, what was his condition then as to vomiting blood?

A. Well, Thursday his condition was worse, and the doctor came to the house daily.

Q. Dr. Ward?

A. Dr. Wassem.

Q. Thursday night did you stay up with him?

A. Yes, a part of the night I did.

Q. Friday arriving was he still in bed?

184 A. Yes.

Q. On Friday night what was his condition?

A. Well, he was getting worse then.

Q. In what way can you tell the jury that he was getting worse?

A. Well, he couldn't eat a thing, he couldn't keep a drink of any kind or anything on his stomach, he would have to vomit it all up, and when he would vomit he would lay on the edge of the bed so he couldn't put himself back on the pil-

185 low unless I would lift him.

Q. Would he try to eat anything?

A. He couldn't eat anything. He would eat a little broth or drink a little milk, but he couldn't keep anything on his stomach.

Q. Would he vomit it up?

A. Yes.

Q. Saturday arrived, what was his condition, growing worse or better?

A. At that time—he told me that day he had

186 to die.

Q. That was on Saturday?

A. Yes.

Q. During all that time was he conscious?

A. Yes.

Q. And did he talk to you about different things?

A. Not much.

Q. Did he talk to you about the baby?

A. Yes.

Q. About the home?

A. Yes.

Q. Now, Mrs. Ring, on Sunday where did you take him? 187

A. To Dubuque.

Q. On Sunday you took him to Dubuque?

A. To the hospital.

Q. And that was on a Sunday you took him to the hospital again, to turn him over to Dr. Pond, the company doctor?

A. Yes.

Q. Was that on Sunday?

A. Yes. 188

Q. Did you stay with him during the night?

A. I stayed a little while with him in the evening.

Q. And then Monday morning did you see him?

A. I did.

Q. With regard to his condition Sunday night, do you know whether or not he was suffering pain?

A. He was.

Q. Tell the jury whether or not anything was done for him there by the hospital attendants or 189 doctor?

A. I know they gave him hypodermics and things like that.

Q. Were you present at the time?

A. I was.

Mr. Briggs: I move to strike that answer out as incompetent, irrelevant and immaterial, when she says hypodermics, which means nothing, because there might be one thing or another thing, the inference that is evidently intended to be conveyed is to be given for pain.

Mr. Davis: We consent that the answer be
190 stricken out.

Q. Now, Mrs. Ring, on that Monday night, or Tuesday, were you there Tuesday a part of the time?

A. I was, until Tuesday noon.

Q. Then where did you go, Mrs. Ring?

A. Why, I went home.

Q. You went home?

A. Yes.

Q. At Oelwein?

191 A. Yes.

Q. Was your baby at Oelwein?

A. He was, and that is why my husband told me I should go home and take care of my baby.

Q. You went home on Tuesday?

A. Yes.

Q. On Wednesday you may tell the jury whether or not you phoned to Dubuque to the hospital?

A. I phoned to Dr. Pond daily while I was there.

192 Q. On Thursday did you phone Dr. Pond?

A. Yes.

Q. Did Dr. Pond call you on Thursday or Friday?

A. On Friday night.

Q. On Friday night?

A. Yes.

Q. About what time?

A. About 9:30.

Q. What did he say to you?

A. He told me my husband was very bad.

Q. And what did you do?

A. I went to Dubuque.

Q. Where did you go? 193

A. To the hospital. (Witness crying.)

Mr. Briggs: I think it is objectionable as not being material or relevant as to what was said or done, on the question of pain and suffering.

No ruling.

Q. Did you arrive at Dubuque?

A. I did.

Mr. Briggs: I object to the question as incompetent, irrelevant and immaterial.

Court: She may answer that. 194

Q. Did you arrive at Dubuque?

A. I did.

Q. When you arrived there did you go to the hospital?

A. I did.

Q. When you got to the hospital was your husband living or dead?

A. The nurse met me at the door—"your husband is dead." (Witness crying.)

Mr. Briggs: That is just exactly what I antici- 195
pated, that it hadn't anything to do with the pain or suffering of this decedent, and I object to that as immaterial and irrelevant.

Mr. Davis: It is evidence of his death.

Mr. Briggs: All that extra hadn't anything to do with pain or suffering,—and his death is admitted.

No ruling.

CROSS-EXAMINATION.

196 By Mr. Briggs:

Q. Mrs. Ring, you say that about Friday, Thursday, he came home?

A. He came home on Friday.

Q. Injured Wednesday night and came home on Friday?

A. Yes.

Mr. Davis: In view of counsel's statement, counsel said that it was admitted that he was dead,
197 I will call the court's attention that the answer denies every part of it.

Mr. Briggs: I have admitted it in court to the jury, and I have admitted it time and again since this case was started; there is no question about this man's death.

Mr. Briggs:

Q. Now, Mrs. Ring, your husband went out only once during the time?

A. That is all.

198 Q. That was the time he went out with Mr. Quist?

A. Yes.

Q. He went out riding?

A. Yes.

Q. You have said that he didn't sleep all these nights; you don't exactly mean that do you?

A. Why, if he slept he would sleep very little.

Q. He must have slept some, didn't he?

A. Very little, he wouldn't sleep more than 15 minutes at a time.

Q. Did he sleep during the day time?

A. No.

Q. Scarcely any during the ten days that he was home?

A. Not very much.

Q. And from Friday until the time you called Dr. Waseem the first time, when was that?

A. Until Tuesday.

Q. From Friday until Tuesday he was so bad that he had to have some one sitting up with him all night?

A. Well, I wouldn't sit up with him all night, I didn't say that, but I couldn't sleep because he tossed in bed, I couldn't sleep, either.

Q. You went to bed, then, each night during that period?

A. Yes.

Q. And he was restless?

A. Yes.

Q. And did you sleep?

A. No, I didn't.

Q. Not at all?

A. No.

Q. Not at all during any of those nights?

A. The only time I would sleep was when my sister would come over and stay with him and I would lay down and get some rest.

Q. But you did go to bed during those nights?

A. Yes.

Q. And it wasn't necessary for some one to stay up with him all the time?

A. Not all the time, I couldn't do much for him.

Q. But what you said gave the impression that

he didn't sleep at all, that was wrong wasn't it,—
202 you wish to have us understand that he didn't sleep at all?

A. He did sleep very little.

Q. "Very little" is rather indefinite; what I would like to get at is about how much he did sleep, what do you mean by very little? About how many hours a night would he sleep?

A. He wouldn't sleep an hour during the night.

Q. He wouldn't sleep an hour during the night any of those nights?

203 A. No, he didn't.

Q. Not an hour a night any night that he was home?

A. No, he didn't.

Q. You were awake so as to know how much he did sleep?

A. I was.

Q. His principal trouble seemed to be that he couldn't eat and retain anything, but would vomit?

A. Yes, and it was hard for him to breathe.

204 Q. It was hard for him to breathe?

A. Yes.

Q. Those two things, that he would vomit when he ate, and it bothered him to breathe?

A. Yes.

Q. You went back to Dubuque with him that Sunday afternoon?

A. I did.

Q. And you stayed until Tuesday and then returned home?

A. Yes.

Q. And he stayed at the hospital alone?

A. No, his mother was with him. His mother 205
went down there on Tuesday afternoon and she stayed until he died.

Q. She was there all the time?

A. Yes, she was.

Q. Is his mother here?

A. No, she is not, she isn't able to come or else she would have been here.

Q. Is Dr. Wassem here?

A. No, he isn't.

Q. Or Dr. Ward? 206

A. No.

Q. You live in Oelwein?

A. I do.

Q. Dr. Ward and Dr. Wassem live in Oelwein?

A. Yes.

Q. Where does his mother live, Mrs. Ring?

A. At that time, Stellman Valley, Illinois.

Q. You say he contributed about $160 to $175 a month to your support?

A. Yes. 207

Q. He was working for the Great Western during what period the last time?

A. From April '920 up until the time he died.

Q. That would be about two years and a half?

A. Yes.

Q. Do you know how he got his pay, whether it was paid semi-monthly or monthly, do you know how he got his pay, whether it was semi-monthly or monthly?

A. Why he would have pay day twice a month, every two weeks.

Q. Do you know how he was paid, by check or
208 otherwise?

A. By check.

Q. Did you see those checks?

A. He turned them over to me.

Q. He turned them over to you?

A. Yes.

Q. What did you do with them?

A. Well, I paid my bills and what money I had left I put in the bank.

Q. What bank did you deposit it in?

209 A. At the Oelwein bank.

Q. What is the name?

A. The State Bank of Oelwein.

Q. During those last two years and a half he didn't earn any money except what he received from the Great Western, did he?

A. No, he didn't.

(Twenty-five checks marked defendant's exhibits 1 to 25 and shown witness). Q. I call your attention to exhibits 1 to 25 inclusive, and ask you
210 if those are the semi-monthly checks that were received by Mr. Ring for his salary from the Chicago & Great Western Railroad during the last year before his death?

Q. This begins with his October pay, 1921, for the second period of October, tell us whether those are the checks?

A. Yes.

Q. Are those the checks that were received?

A. Yes.

Q. And will you look and see if that is his signature on the back of each of those checks?

A. This one isn't.

Q. Whose is that? 211

A. Mine.

Q. Your signature?

A. Yes.

Q. Keep those separate. Then what is your answer?

A. Not all of them.

Q. How many of them?

A. I think there is five of them that are mine.

Q. Five that you signed his name on?

A. I think so. 212

Q. But the money was drawn by you on those checks that you endorsed?

A. Yes.

Q. All the rest were signed by him?

A. Yes.

Q. Do I understand that you deposited all these checks in the bank?

A. Yes, I would say the biggest share of them.

Q. Not all of them?

A. Well I can't say that I did all of them. 213 There was times when he was home when it was pay day, when he would go down town that I couldn't go with him.

Q. But it all went itno the bank account?

A. Well, the money what we spent didn't.

Q. The money that you spent didn't go into the bank?

A. No.

Q. Do you mean that the money was gotten on these checks and you spent the money, and some of it you deposited?

A. Yes.

214 Q. You didn't deposit these checks in the bank but you cashed the checks and got the money?

A. Yes.

Q. But the checks themselves weren't deposited in the bank?

A. Yes, certainly, you would have to take the check to the bank and get the money.

Q. I guess you don't understand my question. What I mean by "depositing" is whether they were deposited to your name and you drew checks on

215 that?

A. Yes.

Q. And you didn't get the money when you took these checks to the bank, you didn't get the money for the check, you left them at the bank and drew checks on the account?

A. No, I got the money.

Q. What did you do with the money?

A. Well, I paid the bills.

Q. With the money?

216 A. Yes.

Q. How about the bank account that you or Mr. Ring started at the bank, did you have a bank account that you drew checks on yourself?

A. Yes.

Q. And that bank account was composed of moneys that were left over after paying the bills?

A. Yes.

Q. And then, going back to my other question, you don't wish to be understood that these were deposited in a bank account, but the money was obtained for these checks?

A. Yes.

Q. And then that money was partly spent and 217
partly deposited in the bank?

A. Yes.

Mr. Briggs: We offer in evidence Defendant's Exhibits 1 to 25 inclusive.

Mr. Davis: No objection. May I inquire if you have the year 1920 here?

Mr. Briggs: I have not.

Q. (Mr. Briggs) You spoke about some back pay?

A. Yes. 218

Q. About $12—1300?

A. Yes.

Q. And Mr. Ring began work for the Great Western the last time on March 19, 1921, or 1920?

A. I don't remember whether it was March or April.

Q. It was in the spring of 1920?

A. Yes.

Q. You are sure about the year?

A. Yes. 219

Q. He did work somewheres else for a time?

A. Yes.

Q. Where had he been working?

A. At Rockford.

Q. Rockford, Illinois?

A. Yes.

Q. You remember that he had been working for the Great Western before that time?

A. Yes.

Q. And when did he quit working for the Great Western before that time?

A. Well, I think Mr. Reinertz, I think he dis-
220 charged him in April.

Q. April of what year?

A. 1919.

Q. About a year before?

A. Yes.

Q. And he went to work then at Rockford?

A. Not right away he didn't.

Q. He was out of employment for a time?

A. Yes.

Q. And then he did earn some money during
221 that year?

A. Yes.

Q. And the railroad union to which he belonged took the matter up with the Government and complained that he was improperly discharged, and he was reinstated?

A. Yes.

Q. And this money that you say was back pay was pay that he was allowed for during the time that he was not working for the Great Western?

222 A. Yes.

Q. And then that wasn't money that was earned during any period that he was working for the company?

A. No, but he would have had it if he was working.

Q. I understand, but it was allowed him and paid him in that way?

A. Yes.

Q. And that is the reason he got this extra, back pay?

A. Yes, the $1200, what was over that he got as back pay when their wages was raised. 223

Q. But this $1200 didn't cover the period while he was working but it covered a period while he was not working?

A. Yes.

Q. To make the story short, it wouldn't allow him anything for being wrongfully discharged, as the Union contended, and the government ruled he was?

A. Yes.

Q. So that didn't include any part of his 224 monthly wage?

A. What was that?

Mr. Davis: Yes, it did.

Q. It didn't cover any part of his monthly wage during the time he got his regular pay? It didn't include any of his monthly wages during the time he got regular pay, when he was working?

A. No.

Q. But it covered a period when he was not working? 225

A. Yes.

Q. And that covered a period before March, or April, 1920?

A. Yes.

Q. And he died in the fall of 1922, October?

A. Yes.

Q. Two years and a half after he had resumed work for the Great Western?

A. Yes.

Q. Who were the callers the first Sunday he was home, do you remember?

A. Well, of course he had quite a few, it was
226 neighbors and railroad friends that called on him.

Q. Do you remember any of them?

A. Yes, I remember some of them.

Q. Who?

A. Mr. Taylor, and Nick Carter, and Mr. Paine and two of his brothers-in-law, and Mr. Bond.

Q. Are any of them here?

A. No

RE-DIRECT EXAMINATION.

227 By Mr. Davis:

Q. Mr. Taylor, who was he?

A. He is a man that works in the freight office.

Q. For what company?

A. The Great Western.

Q. Who is Mr. Paine?

A. He works for the Great Western also.

Q. They both called?

A. Yes.

228 Q. They are not here?

A. No.

Q. Now then, Mrs. Ring, with regard to the back pay which he received, you may state to the jury whether that back pay that was received, after it was received was contributed to your support and maintenance?

A. Well, at that time we was buying furniture, and we used some of that to buy furniture.

Q. I see that counsel has produced only the checks for one year, handing you this to refresh your recollection (paper shown witness) do you

know whether or not in the year 1920 and at other times he drew at times more than $200 a month? 229

A. Yes.

Q. I call your attention to the month of September, 1920, what did he draw?

A. $232.30, with back pay.

Q. In October, 1920?

A. $229.85, with back pay.

Q. November?

A. $192.28.

Q. December?

A. $211.01. 230

Q. In February, 1921?

A. $206.67, that is including back pay.

Q. But it isn't including the back pay that was paid in April?

A. No.

Q. Calling your attention to the back pay, those were small sums?

A. Those were small sums that he got, yes.

Q. Now, Mrs. Ring, during the time after he received this back pay, what was done with it, was 231 it all used at once, or was it used to pay the expenses and upkeep of the family?

A. Well, it was used to pay the expenses and upkeep of the family.

Q. When times would be slack of course he would earn less money?

A. Yes, he would earn less money.

Q. When times were good he would earn more money?

A. Yes.

Q. You used that money to make up the de-
232 ficiency and to keep up the home?

A. Yes.

RE-CROSS EXAMINATION.

By Mr. Briggs:

Q. These checks, Exhibits 1 to 25, cover all the moneys received during the last year prior to his death?

A. No, I don't think so. I think it was in the year 1921 when he received small amounts of back
233 pay.

Q. I mean for wages earned during the last year, these checks cover everything?

A. The 1200?

Q. No, these checks 1 to 25?

A. Yes, his earnings that he got, but you see he got back pay in between those times.

Q. Was that back pay that he had earned before?

A. No.

234 Q. You understand back pay to be compensation for the time when the Government was handling the business of the railroads, and the salaries of the men were changed from time to time, and before they had adjusted the appeals there would be a lapse of time, and when that time expired and a decision had been made, the Government, or the Railroad, would make up to the men whatever he may not have been paid during that period. That is what you understand as back pay?

A. Yes.

Q. So that the money that was received was

received for the wages earned during this War period, is that right?

235

A. Yes.

Q. And in those times, during the war period, the salaries were all a great deal higher than they were since, weren't they?

A. Yes, some of them.

Q. The men were getting tremendously big salaries, weren't they, during that period?

A. Yes, but he was in the army at that time.

Q. Well, I mean even from 1920, when he went back to work; after that the salaries continued for 236
a long time at those high rates, didn't they?

A. Oh, not so very high, no.

Q. You know that they were changed after that?

A. Yes.

Q. But these checks that we have here cover all the money that he earned during the year preceding his death?

A. I think those are for 1921, aren't they?

Q. 1921 and 1922. 237

Mr. Davis: October to October?

A. Yes.

Mr. Briggs: There are four days in October, 1922, that was paid in addition to one year in these checks, the checks cover from October 1st, 1921, to October 4, 1922, four days more than a year.

Mr. Davis:

Q. Mrs. Ring, calling your attention to check No. 10840, dated September 30, of $103.53, is that a month's pay or half a month?

A. Two weeks' pay.

238 Q. That is what he received the last full half month he worked?

A. Yes.

Q. Calling your attention to the $28.27, being check No. 2469, that was his compensation for the last four days before his death?

A. Yes.

It is stipulated that the normal expectancy of a normal man aged 28 years is 36.73 years.

It is stipulated that the sum of $16.65 invested
239 safely at five per cent would produce annually for 36.73 years one dollar per year; that the sum of $14.61 safely invested at six per cent would produce one dollar per year for 36.73 years, and that $12.80 invested safely at seven per cent would produce one dollar per year for 36.73 years.

Mr. Davis: Plaintiff rests.

Recess.

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249 Mr. Briggs made opening statement to the jury on behalf of the defendant.

Mr. Davis: We object to counsel's stating that he isn't objecting to the case being tried here, as entirely improper.

Mr. Briggs: You have emphasized that question, I didn't. We are required to try this case here because here is where the plaintiff has brought this case, not because we want it here, but because we have been brought here from this long distance, and we are not objecting to this case be-

ing tried here. We are asking you not to do anything but fair justice and to render a fair verdict 241
and decision as between these parties, not because it is brought here from Iowa, not because it is from any other place, but on the evidence that is introduced.

Mr. Davis: We object to that as not a proper part of an opening statement, and clearly an argument to the jury. I think it is apparent to the court that that is not proper and I ask counsel to desist. I think it is improper conduct on the part of counsel to attempt to argue this case. 242

Whereupon Mr. Briggs continued his opening statement.

J. P. O'LEARY,

was recalled as a witness on behalf of the defendant.

DIRECT EXAMINATION.

By Mr. Briggs:

Q. Mr. O'Leary, you have given your deposition 243
for the plaintiff in this case?

A. Yes, sir.

Q. And you have also testified on the stand for them?

A. Yes, sir.

Q. Now, there is only one or two other short questions I wish to ask you. Did this draw-bar that has been spoken of as pulling out, pull out in such a way that it became necessary to take the car to the repair-track for repairs?

A. Yes, sir.

244 Q. Where was the nearest repair-track?

A. At the Fair Grounds, at Dubuque.

Q. It could not be repaired at Budd?

A. No, sir.

Q. I believe you said in your deposition that you asked Mr. Ring to go up and notify the head brakeman, Quist?

A. Yes, sir.

Q. That you had this break in two, and to cut off the engine and run back on the other switch to

245 the rear end of the train?

A. Yes, sir.

Mr. Briggs: That's all.

Mr. Davis: That's all.

D. G. FLOWER,

was called as a witness on behalf of the defendant and duly sworn.

DIRECT EXAMINATION.

246 By Mr. Briggs:

Q. Mr. Flower, what is your occupation?

A. A locomotive engineer.

Q. On the Chicago & Great Western?

A. Yes, sir.

Q. Were you the engineer on the train at Budd on the evening of October 4, 1922, when Mr. Ring was injured?

A. I was.

Q. You remember how many cars you had in your train?

A. I would say about fifty, if I remember rightly.

247

Q. Do you remember stopping at the switch as you approached Budd?

A. Yes, sir.

Q. What was the movement that was made by the train at that time?

A. Well, heading in at Budd the air set, indicating the train had broke in two.

Q. You had stopped to open the switch, and started the train, and you had gotten a signal to go ahead?

248

A. Yes.

Q. But in starting the train what happened?

A. The air was set, indicating the train was broke in two.

Q. What did you do then?

A. I whistled a "broke-in-two" signal.

Q. That was to notify the train crew that the train had broken in two?

A. Yes, sir.

Q. Well, what was done next?

249

A. The head brakeman walked back on account of us being on a curve, to where he could get a signal from the rear end.

Q. That was Mr. Quist?

A. Mr. Quist, yes.

Q. Did you get any signal from any one afterwards?

A. In a few minutes I got a signal to back up.

Q. What was the grade and curvature of the track where your train was at that time after it got on the siding?

A. Well, there is quite a grade there, I don't
250 know the percentage, the per cent of the grade.

Q. Grade in which direction?

A. West.

Q. That is, as you went west you climbed a grade?

A. We climbed the grade, yes, sir.

Q. When you got the signal to back up what did you do?

A. We backed up until we received a stop-signal.

251 Q. And then what did you do?

A. In a few seconds I received a go-ahead signal, and we pulled in on the passing-track at the extreme west end.

Q. You pulled in on the passing-track at Budd?

A. At Budd.

Q. Where did you stop your train?

A. To clear the west end of the passing track.

Q. That is where your engine was?

A. Yes.

252 Q. You pulled up as far as the train would go?

A. Yes, sir.

Q. To clear your train at that point?

A. Well, I pulled up as close as I could get up to the switch with the engine, expecting to go right on out, as the other train had gone.

Q. You expected to get a signal to pull out at Budd as soon as the other train you were about to meet came in?

A. Yes, sir, the train was there.

Q. The train was there at Budd at the time?

A. At the time, yes, sir.

Q. And you expected to pull out in a short time? 253

A. Yes, sir.

Q. What was the next signal that you got?

A. Well, the head man had not come over yet, Mr. Quist, and I waited until he came over to throw the switch, and when he came over then he stated that they had a draw-bar out and we would have to bring the engine around to the rear end of the train.

Q. He said you had to bring the engine to the rear of the train? 254

A. Yes, sir.

Q. He gave that information to you?

A. Yes, sir.

Q. What did he then do?

A. Then he went behind the tank and cut the engine off from the train and gave me a signal to slack the train.

Q. He went behind the engine and cut the engine off the train?

A. Yes. 255

Q. So that you could run it onto the main line and get back to the rear of the train?

A. Yes, sir.

Q. Did he tell you that or give you a signal?

A. He gave me a signal.

Q. He gave you a signal that he was going to cut off the engine?

A. Yes, sir.

Q. Well, then, what was the next signal?

A. Stop-signal.

Q. A stop-signal for the engine?

256 A. For the engine, yes, sir.

Q. Where was your fireman during this time that you were talking and getting the signal,—talking with and getting the signals from Mr. Quist?

A. When Mr. Quist first come to the engine the fireman was in the tank shoveling down and breaking up coal, and then I told him, I says, Bill, he wants to cut the engine off and give a slack on the train. He came down on his lefthand side of

257 the engine and took the signal.

Q. He came down on the lefthand side and took the signal and passed it on to you?

A. Yes.

Q. And you were on the righthand side?

A. Yes.

Q. Quist was on the lefthand side when he gave these signals?

A. Yes, sir.

Q. And then what was the next thing that you

258 did?

A. I reversed the engine and gave slack on the pin.

Q. Did you see any movement of the train?

A. No, sir, I did not.

Q. And what did you get, what signal?

A. Stop-signal.

Q. Of the engine, you got that through the fireman?

A. Through the fireman.

Q. What was the next thing?

A. Well, then Mr. Quist came up and throwed the switch and signalled to come ahead, and went 259
to the switch, back to the rear of the train.

Q. He came up past your engine and went up to the switch and threw the switch and gave you a signal to come up?

A. Yes.

Q. And you went up past the switch and went over the switch so as to give you the line free?

A. Yes, sir.

Q. And then what signal did he give you?

A. He gave a back-up signal. 260

Q. And you went where?

A. To the rear of the train, the east track switch, and headed in the rear of the caboose.

Q. When was the first that you knew Ring had been injured?

A. The conductor, Mr. O'Leary, told me that time when we were behind the caboose.

Q. When you got your engine back behind the train?

A. Yes, sir. 261

Q. You saw no movement of the train?

A. I saw no movement of the train.

Q. After you learned that what was done with the caboose and with Mr. Ring?

A. I took the caboose to the west end of the passing-track and telephoned and got orders to return to Dubuque,—Mr. O'Leary got the orders and gave them to me, and we went to Dubuque immediately.

Q. You took the caboose with Mr. Ring in it?

A. Yes.

Q. And that was the evening of October 4,
262 1922?

A. Yes, I am not certain of the date.

Q. That was the night that he was injured?

A. That was the night he was injured, I am positive of that.

Q. Did you see Ring go to the caboose?

A. No, sir, I did not.

Q. Did you see him leave the caboose?

A. Yes, sir.

Q. At Dubuque?

263 A. At Dubuque.

Q. Have you told us all you know of this accident?

A. I have.

Q. How long had Ring been an employe of the Great Western that you know of?

A. Oh, I would judge six—seven years, I am not positive, quite a while.

Q. On this run between Oelwein and Stockton?

A. I think he was employed there most of his
264 time.

Q. Do you know whether he was familiar with the conditions at Budd?

A. Oh, he certainly must have been.

Q. Both the grade and curvature of the track?

A. I am certain he was.

Q. During all that time he was acting as brakeman?

A. Yes, sir.

Q. And he carried a rule-book of the company?

A. I suppose he did, we all did.

Q. You are obliged to do that, are you?

A. We are obliged to do that. 265

Q. Are you familiar with the rule relating to giving information to the engineer, or the man in control of the train and engine, when any one is going in between the cars?

A. I am. I am familiar with the rule, yes. Whether I can repeat the exact words I don't know.

Q. I call your attention to Chicago & Great Western Railroad Company's Book of Rules and ask you if that Rule 707 is the rule that has been 266 in effect on the Great Western for many years?

A. To the best of my knowledge I believe it has.

Q. You have been familiar with that rule?

A. Yes, sir.

Book of Rules marked Exhibit 26 on page 129.

Mr. Briggs: We wish to offer in evidence rule 707 of the Book of Rules of the Great Western, marked exhibit 26.

Mr. Davis: No objection.

Exhibit 26 was read to the jury as follows: 267

"707. Employes must not assume that signals given an engineman have been seen and will be obeyed when obedience to those signals on the part of the engineman is essential to the safety of such employes in the performance of their duties. They must know that the signal has been seen, understood and obeyed, before placing themselves in a dangerous position, otherwise they assume all risks of danger arising from any misunderstanding or disregard of signals."

Q. Did you get any information that either
268 Mr. Ring or Mr. O'Leary were between the cars?

A. No, sir.

Q. Did you have any knowledge at the time this uncoupling took place of your engine that anybody was between the cars?

A. No, sir.

CROSS-EXAMINATION.

By Mr. Davis:

Q. Mr. Flower, as I understand it, after you
269 uncoupled your engine and went down the track past the caboose you learned that Mr. Ring had been hurt?

A. Yes, sir.

Q. He had been hurt before you got down there?

A. Yes, sir.

Q. Was he outside from between the cars when you got down there?

A. I didn't see him.

270 Q. You didn't see him?

A. No, sir.

Q. Who conveyed the information to you that he had been injured?

A. Mr. O'Leary.

Q. Mr. O'Leary was the conductor in charge of that train?

A. Yes, sir.

Q. You know as a practical railroadman that it is the duty of a brakeman to take his instructions and orders from the conductor, don't you, the conductor is the one in charge of the men?

A. Mr. Quist was the first man that informed me that he had been—

271

Q. I say, Mr. O'Leary as conductor had charge of the brakemen?

A. I suppose he does have.

Q. Well, you know that, don't you, as a railroadman, you know that the conductor has the entire charge of that train in its movements, don't you?

A. I suppose he has.

Q. And the brakemen work under orders and directions from the conductor, do they not?

272

A. If it is not against the rules of safety.

Q. Do you mean to say that if a conductor sometimes against the rules of safety directed a brakeman to do a certain thing, that they don't do it?

A. They wouldn't have to.

Q. But they do do it, don't they, you know from practical railroad experience that they do do it?

A. No.

273

Q. Now, Mr. Flower, when you got down there, or when you learned that the train had broke in two, they came up to get a draw-bar, didn't they, up to the engine?

A. No, sir.

Q. Did you learn that a draw-bar was pulled out?

A. I didn't know what had happened.

Q. When this emergency was set, what did that indicate to you?

A. That the train would have broke in two.

91

Q. That it was due to a parting coupler or
274 break of the air-hose, wouldn't it?

A. Yes, sir.

Q. When did you first learn about the draw-bar, you said something about a draw-bar, that Quist was up there?

A. When Quist came over from the rear end he said we have to take the engine around and set out a bad-order car, or some such remark.

Q. He said something about a draw-bar, didn't he?

275 A. Yes, he said he had a draw-bar out.

Q. Did he tell you that they had to chain up a draw-bar?

A. He didn't say, he made no mention of a chain whatever.

Q. Did he mention the draw-bar, that a draw-bar had pulled out?

A. Yes, sir.

Q. You knew then that a draw-bar had pulled out when that train came to a stop, didn't you?

276 A. Yes, sir, I knew it was in a weakened condition.

Q. He said,—he told you the draw-bar had pulled out?

A. He says it was to set out a bar, to get a bar, he says, we have got a bar; that is the remark he made.

Q. Did he say draw-bar?

A. No, "we just got a bar."

Q. Did you understand him to mean draw-bar?

A. Yes, sir.

Q. You knew that there was something defective with that draw-bar that caused that train 277
to part, didn't you?

A. Yes, that was my impression.

Q. You knew that at the time he told you?

A. Yes.

Q. Your engine at the time he told you was attached to the cars?

A. Yes, sir.

Q. So the movement of the train, or your engine, occurred after you knew the draw-bar was defective and the train had parted, didn't it? 278

A. Yes.

RE-DIRECT EXAMINATION.

By Mr. Briggs:

Q. A train might break in two in various ways, could it not?

A. Yes, sir.

Q. Without a draw-bar pulling out?

A. Yes, sir.

Mr. Briggs: We offer Rule No. 703 of the Chi- 279
cago Great Western Railroad Company's Book of Rules in evidence.

Received without objection.

Read into the record as follows:

"703. Persons accepting service will be deemed to have full knowledge of the dangers and risks incident to the service. They agree to exercise due care in the performance of their duties to prevent accident to themselves or others, and, before using them, to see that the machinery, tools, appliances

and materials are in a safe condition to perform
280 the service required."

"Employes are not required nor expected to pursue a dangerous practice in the performance of their duties, nor use defective appliances of any character."

Q. Both of those rules were in force at the time of this accident?

A. Yes, sir.

Q. Both that and 707 that I read before?

A. Yes, sir.

281 Q. Did you make any other movement with your engine except to give the slack for the pin?

A. No.

Q. How far would it be necessary for your engine to move to give the slack to the pin?

A. Oh, I would say a couple of inches.

Q. Just enough to loosen the pin that was bound because it was coupled up?

A. Yes.

282 W. A. JOHNSON,

was called as a witness on behalf of the defendant and duly sworn.

DIRECT EXAMINATION.

By Mr. Briggs:

Q. Mr. Johnson, what is your business?

A. Fireman on the Great Western.

Q. What was it on October 4, 1922?

A. Oh, I wouldn't swear what date it was.

Q. What were you doing on that date, what was your business on that date?

A. Fireman on the Great Western.

Q. Were you fireman on the train which Mr. 283
Flower was engineer of at the time Mr. Ring was injured?

A. Yes.

Q. What were you doing after you pulled in on the sidetrack?

A. After we pulled in and stopped?

Q. Well, while you were pulling in and when you stopped?

A. I was back in the tank putting down coal in the pit, and breaking it up. 284

Q. Back in the tank?

A. In the coal tank.

Q. In the coal tank?

A. Yes, sir, breaking up the coal and pulling it down.

Q. So that you would have it ready to fire in the engine?

A. Yes, sir.

Q. Were you firing the engine at all?

A. I had a stoker, the stoker was firing the 285
engine, that engine was a stoker-engine, you see, and we had only one more station to go until we got coal, and the coal was getting way back and I had to pull it out into the pit so that it would lift it up.

Q. When did you discontinue that?

A. When Mr. Flower said, "he wants to slack the pin."

Q. He wants to slack it?

A. Yes, the head brakeman, Mr. Quist.

Q. And then what did you do?

A. Well, I came right out of the tank to my
286 side, on the left side, and he was giving a signal to slack the pin, as he had given Mr. Flower, and Mr. Flower was over on his side, and he slackened the pin, gave him the slack.

Q. Quist was on which side of the train?

A. On the left side at that time.

Q. That is the side which you were on, is it?

A. Yes, sir.

Q. And Mr. Flower was on the right side?

A. Yes.

287 Q. And Mr. Flower was in a position where he couldn't take all the signals, he couldn't see them, is that right?

A. Yes, sir.

Q. You received them and passed them on to him?

A. Yes, sir.

Q. Did Mr. Flower give the slack?

A. Yes, sir.

Q. Was the engine cut off?

288 A. Yes, sir.

Q. And then what did you do?

A. Well, when Mr. Flower took the slack, he cut the engine off and then give a go-ahead, and I told him to go ahead, and he started ahead, and then he swung us down, and I says, that will do, so Mr. Flower stopped.

Q. Did you see Mr. Ring back there?

A. No, he stepped in out of sight—the hind brakeman.

Q. And did you see the train back or move then?

A. No, I didn't, I didn't see the train move, in fact it would have to move quite a little distance 289
for me to see it, it was dark.

Q. You did what next?

A. Well, then he come up and give us a signal to go ahead.

Q. Did you go up and throw the switch?

A. Yes, sir.

Q. You ran through the switch and you went onto the main track and backed, as you heard, according to Mr. Flower's testimony?

A. We went over the switch he throwed and 290
lined us up for the main line and we backed down the main line to the rear of the train.

Q. Did you at the time this slack was given to draw that pin, know that Mr. Ring was in between the cars?

A. No, sir.

Q. You didn't learn of the accident until after you got back to the rear of the train?

A. I didn't learn of the accident or even that we were broke in two until we got to the back of 291
the train.

Mr. Davis: No cross-examination.

FRANK QUIST,

292 was called as a witness on behalf of the defendant and duly sworn.

DIRECT EXAMINATION.

By Mr. Briggs:

Q. Mr. Quist, what is your business?

A. Brakeman.

Q. On what road?

A. Chicago Great Western.

293 Q. How long have you been brakeman on that road?

A. Three years next month.

Q. What were you doing on October 4, 1922?

A. Braking on the Great Western.

Q. Do you remember the night that Mr. Ring was injured?

A. Yes, sir.

Q. At Budd, Iowa?

A. Yes, sir.

294 Q. And do you remember the train breaking in two at Budd?

A. Yes, sir.

Q. Just tell where you were at the time it broke in two?

A. On the ground at the east switch.

Q. On the ground at the east switch at the head of the train?

A. Yes, sir.

Q. What had you done after the train stopped at Budd and before it broke in two?

A. Well, I was on the engine, when we stopped I got off the engine and walked to the head end 295
lining the switch, and he started to pull in, and then whistled a broke-in-two signal.

Q. The engineer whistled a break-in-two signal?

A. Yes, sir.

Q. And then what did you do?

A. Started back toward the rear.

Q. How far back did you go?

A. Oh, I should judge about half way.

Q. What happened then? 296

A. I could see the rear end men with their lanterns.

Q. Well, did you meet anybody back there at that time?

A. Meet anybody?

Q. Yes.

A. No, sir. Not at that time.

Q. And then what did you do after that?

A. He gave me a signal to back up.

Q. What was done? 297

A. Which I transferred to the engineer.

Q. And did he back up?

A. He backed up.

Q. And then what did you do?

A. I stayed right there and waited a few minutes, not so very long, and got a signal to go ahead.

Q. And then what was done?

A. And then I says, what happened back there, did we get a draw-bar? Yes.

Q. Who did you say that to?

A. To Ring.

298 Q. Did Ring answer?

A. Yes, he said yes. I said, what shape or condition is it in, will she pull, I says, into clear? He says, that remains to be seen, go ahead and pull him in, and come around with the engine.

Q. What does that mean?

A. Well, I took it to mean that I should go in and go around with the engine.

Q. That expression?

A. That means that, to go around about my 299 business, to go up there and get into clear, and come back.

Q. Cut off the engine?

A. Yes, cut off the engine, and come back.

Q. Was that done?

A. Yes, sir.

Q. And the train was pulled in onto the passing track?

A. Yes, sir.

Q. What did you do as it was pulled in?

300 A. I was hanging on the side of a car when we were pulling them in.

Q. Riding it?

A. Yes, sir.

Q. When it stopped what did you do?

A. Walked up to cut off the engine.

Q. What did you do when you got there?

A. I stepped in between and turned the angle-cock preparing to cut the engine off.

Q. The angle-cock, you mean the air?

A. That is the air, yes, sir. I thought probably

I could get the pin without any slacking up, but I couldn't. 301

Q. Why?

A. Because the knuckles was tight.

Q. That is, it was stretched instead of together?

A. Yes, sir.

Q. And pulled against the pin and held the pin tight so that it wouldn't lift, is that right?

A. Yes, sir, that is right.

Q. And then what did you do?

A. I told him to give a signal that I wanted 302 slack, and the engineer he was standing in the gang-way.

Q. That is Mr. Flower, who just testified?

A. Yes, sir, "give me the slack and we will cut her off and we will go back to the rear end."

Q. You told him?

A. We have got a bad-order to set out.

Q. Did he give you the slack?

A. Yes, sir.

Q. What did you do? 303

A. The minute I got the slack I raised the pin.

Q. What occurred then?

A. And I gave him a signal to go ahead, he started ahead and the car started the other way.

Q. The train that you cut off started the other way?

A. I swung him down, I didn't pay no more attention to him, I walked back in between the engine and the cars and took hold of the angle-cock and turned it over gently and set the air and stopped the train from going out the other end.

Q. Did it set the air?

304 A. It did because they stopped.

Q. How far had the car that you cut off moved before it stopped?

A. Oh, five—six feet.

Q. No more?

A. Well, it might have been seven, I wouldn't—it is just an estimate.

Q. That is your best judgment?

A. Yes, sir, from five to seven.

Q. Did you know at that time that Ring was

305 between the cars or in the train?

A. No, sir, I had no way to know it.

Q. Had you received any signal or warning that he was there?

A. None whatsoever.

Q. And you were following out his instructions when you cut the engine off and came around?

A. Yes, sir.

Q. What did you do next?

A. I headed out onto the main line, and went

306 down the main line to the east end, and headed in on the caboose.

Q. What do you mean by "heading in on the caboose"?

A. Well, you see, coming down the main line we were backing, and coming to throw this switch here we headed in.

Q. The caboose was the last car on the track?

A. Yes, sir.

Q. When you got back there what did you learn relative to Ring?

A. Well, after I got the engine I walked back to where I saw the light was and I stepped in be- 307
tween the cars and he was on the other side lying down in the grass, and I asked him what happened, he said, "the chain caught me"; that was all that was said.

Q. Did you ask him whether it hurt him?

A. No, I didn't.

Q. And then what was done next, relative to taking him to the caboose, for instance?

A. Well, they came there and took the engine and the caboose and one of the cars, and set some 308
of them over on the main line, and he says you take care of this car, he said, get that chain off.

Q. He said that to you?

A. Yes, which I did, and he made the switch and came back, and Ring got up and walked aside of him and took hold of the grab-iron of the caboose and went in the caboose and laid down on a bunk.

Q. He got into the caboose himself?

A. Yes, sir. 309

Q. Did you and O'Leary go with him?

A. Yes, sir.

Q. And when he got to the caboose he got in alone, is that right?

A. Yes, sir.

Q. And then what was done next about going from there to Dubuque?

A. We went to the west end and the engineer called a dispatcher and got running orders to go back to Dubuque.

Q. Went to the west end?

310 A. Yes, sir.

Q. West end of what?

A. The passing track.

Q. Did you have telephone service there?

A. Yes, sir.

Q. And you got orders?

A. To go back to Dubuque.

Q. To go back to Dubuque with him?

A. Yes, sir.

Q. And did you do so?

311 A. Yes, sir.

Q. Did you ride in the caboose with him?

A. Yes, sir.

Q. What was his condition during the trip from Budd to Dubuque, and what was said and done?

A. There was nothing said or done. I asked him what I could do for him; he said, nothing, Frank, he says, there is nothing. That's all there was to it, he lay on one side a while and then he would roll on the other. I took down a cushion

312 and bed-clothes and made him as comfortable as I could.

Q. What was done when you arrived at Dubuque?

A. The doctor took charge of him there, and that is the last.

Q. Dr. Pond?

A. Yes, sir.

Q. When he got off the caboose at Dubuque who went with him?

A. Doc. Pond and another doctor walked with him over to Dr. Pond's car, and I walked behind

them, he got in the car and I asked him if he wanted me to go with him, he says no, you go on about your business. 313

Q. Did you see him again that night?

A. No, sir.

Q. When did you next see him?

A. On Monday.

Q. On Monday following?

A. Yes, sir.

Q. What occurred that Monday following?

A. I came in in the forenoon and I had dinner, and I went up there to see him. I asked him if 314 there was anything he wanted and he said, I would like to go down to the yard office. I says, all right, come on and get in the Ford and we will go.

Q. Your Ford?

A. Yes, sir. We drove to the yard office, walked over to the caboose track, but the caboose wasn't there.

Q. How far was that?

A. Well, about as far as once and a half across this room anyway. 315

Q. And then what?

A. We walked back and we walked in the yard office and looked at the board, bulletins, mail-box. I says, you want to go down and find the caboose? Yes. All right, we will go again. So we drove down to the passenger depot.

Q. How far is that?

A. Well, that must be six-seven blocks, anyway, from the yard office. And left the car there at the viaduct, and walked over.

Q. How far?

316 A. Well, it wasn't very far, we crossed probably four or five, maybe six tracks. I can't remember on just which track the caboose was.

Q. You found the caboose?

A. We found the caboose, and he waited outside, and I went in, I forget what it was he wanted, something he had in there that he wanted. I brought it out and I told him I would put it away, that I knew where it was. We went back to the car, I says, where do you want to go now, do you
317 want a paper or anything? Yes, he might have a Chicago paper, he says. I says, it don't hurt you to read, does it? No, not a bit, he says. So we drove up and got a Chicago paper, and from there home.

Q. That was on Monday?

A. Yes, sir.

Q. Did you see him afterwards?

A. I seen him a couple of times afterwards, but just a few minutes at a time, on my way to work.

318 Q. At his house?

A. Yes, sir.

Q. Did you talk with him about how he felt at any other time?

A. No, I wouldn't say I asked him exactly how he felt, only that one time. My wife used to call up on the telephone and she would tell me when I would come in.

Q. How long have you been, you said, working for the Great Western?

A. Three years next month.

Q. What run have you been on during that time?

319

A. Well, I guess I worked pretty near all of them.

Q. Did you run between Oelwein and Stockton a considerable time?

A. I have run between Oelwein and Stockton, and I have worked between Stockton and Chicago

Q. How long did you run between Oelwein and Stockton?

A. Well, probably all excepting about two months I think.

320

Q. That was your run excepting for a short period?

A. Yes.

Q. And did you and Ring use to work together?

A. We did for a short time, yes.

Q. Before the accident?

A. Yes, sir.

Q. You are a cousin of Ring's?

A. Yes, sir.

Q. Are you familiar with and do you know of Mr. Ring's habits with reference to living expenses while he was out on a run?

321

Mr. Davis: Answer by yes or no.

A. Yes.

Q. Did you and he live about the same during that time?

Mr. Davis: Objected to as calling for the conclusion of the witness and no foundation laid.

Mr. Briggs: We expect to show the way both of these men lived and what it cost.

No ruling heard.

Q. Mr. Quist, during the last year before his
322 death you were working on that run between Oelwein and Stockton?

A. Yes, sir.

Q. Was Mr. Ring working there during that period?

A. He was working there, yes.

Q. Did you observe the way he lived and how he incurred and paid his expenses, the same as you did and others whom he worked with?

A. Yes; during the time we didn't work to-
323 gether we would occasionally meet there, sometimes we were there several hours together, sometimes we just saw each other to speak; sometimes we would sit down and eat dinner or breakfast or supper together, whatever it might be; we were most always together when we were down there.

Q. Do you know what his general cost of living would be as Ring lived along during that period when he was out on the road, approximately, at least?

324 A. Yes.

Q. What in your opinion was the minimum cost of Mr. Ring for his expenses and living while he was out on the road in the service between Stockton and Oelwein, each month?

A. Well, to the best of my estimation it would be around $40. It would vary.

Q. Would it average $40?

A. I have never figured it so closely, I wouldn't assume to say; in my judgment it would be $40.

Q. What was the grade of the passing track

where this train stood where you cut off the engine?

325

A. Well, I couldn't say what the grade is.

Q. I don't mean the exact grade, but is it down or up?

A. Up.

Q. Up which direction?

A. West.

Q. That is, as you come from the caboose toward the engine you would go up there?

A. Yes, sir.

Q. Was that known to all the railroad men 326 that were operating there?

A. It couldn't help but be.

CROSS-EXAMINATION.

By Mr. Davis:

Q. You know the grade was up?

A. Yes.

Q. You knew when you cut the engine off the grade was up?

A. Yes. 327

Q. Did you know then that the grade was up to such an extent that when you cut off the engine unless you set the air on the cars all the cars would drift back, did you know that before you cut the engine off, Quist?

A. It isn't customary to set the air.

Q. Did you know that the grade was of such an extent that when you cut the engine off that unless you set the air on the cars the cars would start to drift back, did you know that?

A. No, sir.

328 Q. You say you didn't know it?

A. I know there is a grade there, yes.

Q. But did you know that the grade was of such an extent that when you cut the engine off unless you set the air on the cars the cars would drift back, did you know that that day?

A. Well, I will tell you, as soon as—

Q. Answer my question, please?

A. Yes, I am going to answer it.

Q. Answer it yes or no. It can be answered

329 yes or no.

A. That is a pretty hard question to answer yes.

Q. If you can, answer it by yes or no, and if you can't I wish you would tell the jury why you can't.

Q. (Question read to the witness.)

A. No, sir, I can't answer that question that way.

Q. You can't answer it either yes or no?

330 A. Not in that way, no, sir.

Q. You didn't set the air on those cars until after they started to drift, did you?

A. No, sir.

Q. Were you present when Mr. O'Leary gave his deposition in St. Paul last winter?

A. I was in St. Paul, yes.

Q. You were there at the time he gave his deposition, weren't you in the room?

A. I think I was.

Q. And you heard him testify that the car drifted back forty feet, didn't you?

A. Well, I tell you I didn't pay much attention to it, I was sitting back in one corner there. 331

Q. As I understand you, all they drifted back was five to seven feet and then you set the air, is that right?

A. That is what I did of my own act, yes, sir.

Q. And then the cars came to a stop, didn't they?

A. Yes.

Q. That air would hold it, then, on that grade?

A. Yes.

Q. And, Mr. Quist, did Ring work with you all 332 the time on the same run last year?

A. No, we just worked together for a short time.

Q. About how long?

A. And we worked together a short time in the spring. And then I was on the extra board for a while, practically all summer.

Q. How long in the spring did you work on the same run as Mr. Ring?

A. Well, I should judge probably a month and 333 a half, I wouldn't say so correctly; about that.

Q. Will you now swear that you worked over two weeks in the spring of 1922 on the same run as Ed. Ring?

A. Yes, sir.

Q. How much longer?

A. Well, that, as I say, I couldn't tell, because I went back to work then and we started in September, I believe it was.

Q. Did you work with him then?

A. Again, yes.

Q. Up to the time of his death?

334 A. Yes, sir.

Q. Now, then, Mr. Quist, did you know that Mr. Ring brought his meals with him packed by his wife, you knew that, didn't you?

A. Well, he carried lunch sometimes, not always.

Q. Well, as a rule he did, did he not?

A. I couldn't say to that because I very seldom was back there going over the road.

Q. When he got to the end of the line is it not

335 a fact that he slept in a caboose when he was down at the other end of the line?

A. Yes, sir.

Q. He didn't have any bills to pay for hotel room, did he?

A. No, sir.

Q. He didn't drink, did he?

A. No, sir.

Q. A man of good habits?

A. Yes, sir.

336 Q. He was a thrifty man, wasn't he, you knew that?

A. Yes, sir.

Q. A saving man, wasn't he, that is true, isn't it?

A. Yes, sir.

Q. A man who tried to save his money?

A. Yes, sir.

Q. A good, hard, honest worker, wasn't he?

A. He was an honest man.

Q. Now, Mr. Quist, when you told this counsel

and this jury that in your opinion he spent $40 a
month at that end of the line, it would have to be 337
for meals, wouldn't it, that's the only thing that
you ever saw him spend any money for, was for
something to eat, wasn't it?

A. Yes, sir.

Q. How many meals would you say you ate
with him during the time you worked with him?

A. Oh, I couldn't tell you that, how many we
ate together, that is impossible.

Q. Would you say you know what he paid for
his meals, do you know of any instance what he 338
paid for his meals?

A. Well, they have a price there, and for lunch
it is forty cents up.

Q. Forty cents, and he would have only one
meal on the run at that end?

A. There is only one meal a day that he got for
forty cents, and that is dinner.

Q. He would have that meal to eat, wouldn't
he?

A. Yes, that he was there. 339

Q. And sometimes he didn't eat there with you,
did he?

A. No, not if I wasn't there.

Q. But even when you were there sometimes he
would eat his lunch in the caboose, didn't he, his
dinner, isn't that true, Mr. Quist

A. Not while we broke together.

Q. Not at any time?

A. He always ate—when we were in Stockton
he ate in Stockton, and what he had in the ca-
boose between times that I don't know.

Q. When would you get into Stockton?

340 A. All hours of the night and all hours of the day.

Q. How many meals would you eat at Stockton?

A. Sometimes you may eat two, might be five, maybe six, it all depends on how long you were there.

Q. In an ordinary run?

A. That is very hard to tell. The first man in is the first man out.

341 Q. And a man coming at night would be out the next morning?

A. Provided that there was a train to go, or otherwise they would hold him.

Q. They who usually worked regularly?

A. That wouldn't make no difference.

Q. How long would he stay an over-night stop?

A. Anywhere from eight hours to 24.

Q. It might be eight he would stop there?

A. Yes.

342 Q. What meals would he eat if he had eight hours stop?

A. He would eat about two, probably three, depending on what time he would come in there.

Q. Eat three meals in eight hours?

A. Generally eat when we leave.

Q. Did he eat three meals when he stopped there eight hours?

A. You might not call it a full meal.

Q. He would get a sandwich?

A. Yes, or a piece of pie or a glass of milk.

Q. That would cost about how much?

A. Milk is five cents a glass, pie is five cents a 343
cut and ice cream is five cents a dish.

Q. Did you see him eat any ice cream in October?

A. I have seen him eat lots of it.

Q. At home or on the train?

A. At Stockton.

Q. Mr. Quist, when you say that his expenses would be $40 a month, that is your mere guess as to what you think he spent, isn't it?

A. That is my estimate. 344

Q. As a matter of fact you wouldn't want to swear that he spent at the time over $30 a month, you wouldn't tell this jury that, would you?

A. Well, it is as I say, it varies, one time you might get by with it and another time you wouldn't.

Q. Would you say, Mr. Quist, that you would now state to the jury that you know of your own knowledge that he spent at any time any money more than $30 at Stockton, what is your answer? 345

A. My answer is the same as I said before, I would place it at $40.

Q. But do you know of your own knowledge that he ever spent as much as $30 any month?

A. I never checked up on what he spent.

Q. You never checked up on what he spent and you are simply giving an estimate?

A. Yes, sir.

Q. It may be $30 and it may be $40?

A. Yes, and it may be more, I never checked my own expenses, that is the point I make.

Q. You have never checked your own?

346 A. No, sir.

Q. So you don't know what your expenses was?

A. Not so correctly.

Q. It might have been less than $30 and it might be more?

A. No, sir, not less.

Q. You are sure now—let me ask you this, will you state now under oath that you know from your own knowledge that Mr. Ring ever spent more than $30 on the run?

347 A. No, I won't state any because I can't.

Q. You didn't pay any particular attention to what he spent, did you?

A. I never, that wasn't my business.

Q. And you never paid enough particular attention to what you paid yourself to be a bit definite as to what you spent, have you?

A. Not right down to the rock-bottom dollar, no.

Q. Now, Mr. Quist, isn't it a fact that you were

348 present when Mr. O'Leary gave his deposition at St. Paul when he stated that you and Mr. O'Leary helped Mr. Ring into the caboose, you heard him testify to that, didn't you?

A. I walked with him from the track over to the caboose.

Q. Did you take hold of him?

A. I took hold of his arm.

Q. Did Mr. O'Leary take hold of his arm?

A. I wouldn't say that at all.

Q. Now, you at least helped him to the caboose?

A. Got to the caboose, he walked himself.

Q. But you had hold of him? 349

A. I walked alongside of him.

Q. You had hold of him I say?

A. I had hold of his arm.

Q. And then you got orders to take him to the hospital at Dubuque, didn't you?

A. That was afterwards.

Q. At any rate you got orders to take him to Dubuque and he was taken to the hospital there?

A. Yes, sir.

Q. Now, then, Mr. Quist, on the Monday that 350
you took him riding in your Ford, how long were you gone from the house?

A. Oh, I don't know, propably half an hour or 45 minutes.

Q. How much of the time did you spend in the car?

A. Well, it was all spent in the car, only what we walked from these different places.

Q. How much time was he out of the car, five or ten minutes? 351

A. I don't know what the time was.

Q. When he walked around did he walk just as he used to before he was hurt?

A. Oh, he walked a little stooped and slow.

Q. Did he place his hand on any part of his body as he walked?

A. No, sir, he didn't.

Q. You asked or inquired if the ride hurt him, did you?

A. Yes, sir.

Q. What did he say?

352 A. He said, no.

Q. When you saw him at his home, did you ever see him in bed?

A. Once.

Q. Was he lying there quietly or tossing about?

A. Well, that night he was talking and laughing, but he was moving around.

Q. Moving around; did you see anything that indicated that he was uncomfortable as he moved around, Mr. Quist, in that cousin of yours?

353 A. Well, he said he had, he vomited a little, that was all he complained about.

Q. He told you he had pain, didn't he, there that night, in the pit of his stomach?

A. He said he felt full, that's all.

Q. Where did he put his hand when he said he felt full?

A. On his stomach.

Q. Did you hear him complaining about pain at any time?

354 A. No, sir.

Q. You never did?

A. No, sir.

Q. Did you see him after Monday and before he went back to Dubuque to die there?

A. When he went to Dubuque Sunday you mean?

Q. Yes, sir.

A. No, sir.

Q. From Monday up to Sunday, when he went to Dubuque you didn't see him after that Monday you were riding with him?

A. I seen him once or twice at the house after that ride,—I didn't understand you. 355

Q. Is that when he told you he was vomiting?

A. That is one time, yes, sir.

Q. What day was that vomiting?

A. No, I don't know.

RE-DIRECT EXAMINATION.

By Mr. Briggs:

Q. Do you know what night it was that you was in there when he was in bed?

A. It was in the middle of the week sometime, 356 I wouldn't say which night it was.

Q. In the middle of the week after you had your ride?

A. Yes.

Q. And he went to Dubuque the following Sunday?

A. Yes.

Q. And you say he was in bed that night, laughing and talking?

A. Yes, some of the neighbors sat on the bed 357 there talking.

Q. When you cut this engine off and took the slack to loosen the pin, did you have any knowledge that Ring was in between the cars?

A. None whatsoever.

Q. Or that anyone else was in between the cars?

A. No, sir.

Q. No information had been passed up to you by them?

A. No, not a word.

Q. You said you couldn't answer Mr. Davis'
358 question, one of them about whether the cars would run back if you didn't set the air or something to that effect. Will you explain just exactly what the situation would be in cutting off the cars there with the air set or with the air not set?

A. If you drift into a place the engineer sets the air,—the air is already set, that is why it isn't customary for the brakeman at any time to set the air only when the train starts away, when that is the only salvation you have. It is to stop them
359 after you have cut the engine off.

Q. When you cut the engine off did you know whether the air had been set on those cars or not?

A. No, sir, I didn't.

Q. You didn't know until the cars began to move that it was not set?

A. No, sir.

Q. Mr. O'Leary said the car where he and Ring were moved back about forty feet, and you say that you would make the distance that the car moved
360 back where you were, about 5-6 feet, is that explainable, the difference?

A. Yes, sir.

Q. In what way?

A. In the slack between the cars, in the drawbars.

Q. In the slack between the cars, extending back?

A. Yes.

Q. Would make that difference?

A. Yes, you can average about a foot, anyway, between every two cars.

By Mr. Davis:

Q. Do you want to swear now that there is a foot of slack between two cars, Mr. Quist? 361

A. Well, there is, I have seen when they would give more than that.

Q. Don't you know that on each of those couplers or between the cars, of the draw-bars, that the average slack of the cars is from 3 to 4 inches, on each car?

A. Then you have got two.

Q. And two times three is six, and two times four is eight. Now, then, Mr. Quist, when the 362 slack comes out of a train, it starts to come out pretty quick after it stops, doesn't it, as a general rule?

A. Sometimes it does, it all depends on how the air is working on the cars.

Q. If the air is working, if the air is set, the slack comes out?

A. Yes, sir.

Q. Will it come out if it isn't set?

A. It works both ways. 63

Q. This car in question that you speak of, do you now claim you saw any slack come out of that train, did you notice it?

A. I wasn't where I could see any slack coming.

Q. When you set the air on this head car, the cars came to a stop?

A. They did on the front end.

Q. You don't know what happened to the rear end, did you?

A. I couldn't see any rear end.

Q. The slack in the train is the space between
364 the different cars, whether they are a foot apart or close together, isn't it?

A. It is in the draw-bar, the slack, there is springs in there.

Q. Now, then, the slack in the train is the greatest when the slack comes out of the train where the train would be on the level rather than an incline, isn't that true?

A. Runs in going down, yes.

Q. All right; if a train is running on an in-
365 cline those cars pull out the slack all out of the train if it has incline enough to pull the cars down, isn't that true?

A. Yes.

Q. So on an incline such as you are describing, the rear end would have pulled away from the head end so as to pull the slack out when the engine came to a stop, wouldn't it, isn't that true?

A. No, not necessarily.

Q. What?

366 A. No, sir.

Q. Do you mean to tell this jury that a train standing upon this incline sufficient to allow it to drift back when it comes to a stop, with that incline that the train will not go and pull the slack out before it comes to a stop?

A. Here's the idea: You have independent air on every engine, and if the engineman stops his train with the engine air it is naturally the weight of the train will walk up against the engine, because that has such braking power that they are bound to walk up against them; if the engine

comes to a stop with engine air the cars walk up against the engine.

367 Q. If there is an incline such as to allow the cars to drift back, don't you know as a matter of fact that after the engine is stopped the slack will immediately back out of that train, don't you know that?

A. Well, not necessarily right away.

Q. Well, isn't it a fact that it would almost immediately start to pull out, if the cars were on an incline where they would drift back?

A. That all depends on the incline.

368 Q. But what was that incline?

A. Well, as I say, I wouldn't commence to state the per cent of the grade.

Q. Was there much of a grade there, was it an appreciable grade?

A. It is up-hill all the way up to the next town.

Q. Was it up-hill enough so that cars such as you had there would drift down unless the air was set, what is your answer?

A. Well, giving them a little bunt with the en- 369 gine to get the slack would naturally start them down.

Q. The bunt of the engine would start them down?

A. Just to get the slack of the pin, that doesn't take much.

Q. I mean when the engine is pulled out and you set the air on that head car, the cars would naturally have drifted down and come to a stop and the slack would be out, wouldn't it?

A. No, not with the air set on them.

Q. This engine stopped on this incline, didn't
370 it?

A. Yes.

Q. And then it stood there for some time, didn't it, before it was cut off?

A. While I walked about three car lengths.

Q. And if there was an incline sufficient to allow the cars to drift back, isn't it a fact that the rear cars would pull and pull the slack out on that incline in a very quick time? You know that as a railroad man, don't you, Mr. Quist?

371 A. Well, this place here isn't all grade all the way, that is, this siding here has got a kind of a little hog-back in it.

Q. Oh, I see, it isn't all grade clear down; your train consisted of how many cars, Quist?

A. I don't remember, 40 or 50.

Q. How far from the head car would this sag which you would go up against?

A. There is a grade, but the passing track runs lower than the main line.

372 Q. But you just said there wasn't any grade a part of the way back there where these cars went?

A. It is on this passing track, it isn't surfaced up and fixed up like the main line.

Q. But there is a dip in the track part way back in that incline?

A. A little bit, not very much.

Q. Where the cars would go back and then come up, is that right (indicating wavily)?

A. Oh, nothing like that.

Q. Oh, I don't mean that, but there was a dip there in those tracks?

A. Yes, sir, a little.

Q. There being a dip in this track where the 373
cars stood, do you mean to say that on cars with that dip the slack wouldn't pull out on those cars? What is your answer?

A. It certainly would pull out after you backed up to get the slack.

Q. Why?

A. Can't help but run back.

Q. It would pull out going up the dip just as well as down, would it, is that right?

A. Well, I have seen them pull out. 374

Q. Answer the question, would the slack pull out up the dip just as well as down the dip, Mr. Quist?

A. Well, this was way back, and I wouldn't answer you to that part.

Q. You know the condition of the track there and are familiar with it, aren't you?

A. Yes, I am familiar with it.

Q. I am asking you about this particular track, Mr. Quist, how much of a dip is there there? 375

A. Well, I will answer that the same as I do the main line, I don't know the grade at all.

Q. In that dip on that grade is it sufficient so that the cars if standing on it would roll down unless the brakes were set?

A. The brakes ought to be set when you leave a train there.

Q. I didn't ask you that, I asked you if the grade is sufficient so that the cars if standing on it would roll down unless the brakes were set,—you know that track?

(No answer.)

Mr. Davis: Well, that's all.

376 By Mr. Briggs:

Q. They did roll down, didn't they, Mr. Quist?

A. Yes, sir, they did roll down.

Q. You spoke about that you have known cars with a foot of slack between them, will you explain what you mean by that?

A. Well, some cars where the draft-timbers are of wood, with heavy loads on them some will give more and some will give less. I have seen them where you have to take a pretty fair step to walk

377 over the top of them, and others, where they have these steel frames, there is no chance to give.

Q. A difference in the springs—

A. Yes, sir.

Mr. Briggs: The defendant offers in evidence the depositions of G. C. McSperrin, A. R. Baldwin, John J. Melms and P. M. Raine.

378 I will omit the formal part of the stipulation and start out with the testimony of Mr. G. C. McSperrin, in the County of Fayette, state of Iowa, taken before Beatrice Becker, a Notary Public, by virtue of the notice hereto attached as stated in the return thereto.

Mr. O'Brien:

Q. You may give your name to the reporter?

A. G. C. McSperrin.

Q. Where do you reside?

A. 116 3rd St. North, Oelwein, Iowa.

Q. What is your present occupation?

A. Conductor for the Chicago Great Western 379
Railroad Company.

Q. In what service?

A. Freight service.

Q. Where is your run?

A. Between Oelwein and East Stockton.

Q. Oelwein, Iowa, and East Stockton, Ill.?

A. Yes, sir.

Q. How long have you been on this run?

A. I have been in service six years this coming September. 380

Q. Do you pay your expenses when you are out on the road?

A. Sometimes, and other times we eat in the caboose.

Q. When you pay your expenses other than what you incur by living in the caboose, do you know what it will cost you per month?

A. Around forty dollars.

Q. Were you acquainted with Edmund Ring during his lifetime? 381

A. Yes, sir.

Q. Do you recall of his meeting with an injury?

A. Yes, I was talking with him after the injury.

Q. Where were you talking with him?

A. On the corner of Third Street North.

Q. How far from his home was that?

A. It was about a block and a half from his home.

Q. You may state whether or not at that time he made any complaint of pain and suffering?

A. I asked him how he felt and he said he was

getting along as well as could be expected at the
382 time.

Q. That's all.

Testimony of A. R. Baldwin, in the county of Fayette, state of Iowa, taken before Beatrice Becker, a Notary Public, by virtue of the notice hereto attached as stated in the return thereto.

Mr. E. R. O'Brien:

Q. You may give your name to the reporter?

383 A. A. R. Baldwin.

Q. Where do you reside, Mr. Baldwin?

A. Oelwein, Iowa, I do not recall the street number.

Q. What is your present employment?

A. Trainman on the Chicago Great Western Railroad Company.

Q. In what capacity?

A. As brakeman.

Q. Where do you run?

384 A. Between Oelwein and Stockton.

Q. Oelwein, Iowa and Stockton, Ill?

A. Yes, sir.

Q. How long have you been on this run?

A. About two and one-half years, approximately.

Q. When you are out on your run from Oelwein to Stockton where do you board and room?

A. We board at Stockton.

Q. Do you take your meals in the caboose or restaurants?

A. I eat at restaurants.

Q. Do you know what it will cost you an average per month when out on your run? 385

A. Between forty and fifty dollars.

Testimony of John J. Melms, in the county of Fayette, state of Iowa, taken before Beatrice Becker, a notary public, by virtue of the notice hereto attached as stated in the return thereto.

Mr. O'Brien:

Q. You may give your name to the reporter?

A. John J. Melms. 386

Q. Where do you reside?

A. 116 3rd Street North.

Q. In what city?

A. Oelwein, Iowa.

Q. What is your present occupation?

A. Brakeman on the Chicago & Great Western Railroad.

Q. In what service?

A. Trainman.

Q. Freight or passenger? 387

A. Freight.

Q. Where is your run?

A. Between Oelwein and Stockton.

Q. Oelwein, Iowa and Stockton, Ill?

A. Yes, sir.

Q. When you are out on your run do you board in the caboose or in restaurants and cafes?

A. In restaurants and cafes.

Q. How much an average per month does it cost you for expenses on the road, for board, room and incidentals?

A. About sixty dollars per month.

388

Testimony of P. M. Raine in the county of Fayette, state of Iowa, taken before Beatrice Becker, a notary public, by virtue of the notice hereto attached as stated in the return thereto.

Mr. O'Brien:

Q. What are your initials, Mr. Raine?

A. P. M.

Q. Where do you live?

389 A. Temple Block, Oelwein, Iowa.

Q. What is your present occupation?

A. Brakeman.

Q. For what railroad?

A. Chicago, Great Western Railroad Co.

Q. What service, passenger or freight?

A. Freight.

Q. Where is your run?

A. Oelwein, to East Stockton, Ill.

Q. How long have you been on this run?

390 A. Three years.

Q. What is your average monthly expenses away from the terminal at Oelwein?

A. Between $40 and $45 per month.

The defendant offers in evidence the depositions of Marjorie Phillips, Mildred Kinney and Elizabeth Cahill.

Testimony of Marjorie Phillips, in the county of Dubuque, state of Iowa, taken before Walter Koer-

ner, a notary public, by virtue of the notice hereto attached as stated in the return thereto.

391

By Mr. Geo. T. Lyon:

Q. State your name?

A. Marjorie Phillips.

Q. Where do you reside?

A. Dubuque, 2135 Jackson Street.

Q. What is your business, Miss Phillips?

A. In training at Mercy Hospital.

Q. As a nurse?

A. A nurse.

Q. How long have you been engaged in that work? 392

A. A year and a half.

Q. Were you acting as nurse at Mercy Hospital on or about the 4th of October, 1922?

A. Yes, I was.

Q. Do you remember of a patient being brought there on the 4th of October, by the name of Edmund Ludwig Ring?

A. Yes.

Q. Did you take care of him as a nurse during the time that he was there? 393

A. Why, I had charge of the floor at night and he was a patient on general and I took care of him on general at night, I was night nurse on that floor.

Q. Do you remember, Miss Phillips, about what time of the day he was brought in?

A. Well, I wasn't there in the day time, I was just there at night, but the first time he was brought in about 7:30 or 8:00 o'clock, I think it was.

Q. In the evening?

A. In the evening.

Q. And did you have charge of him that night?

394 A. Yes, I did.

Q. Can you state in a general way what you observed about his condition at that time?

A. Well, the first night he was in he didn't seem to have so very much pain, he was very restless, he couldn't sleep but he didn't complain of much pain.

Q. What if any treatment was administered for him at that time?

A. Do you mean the first night he was in?

395 Q. Yes.

A. The doctor had ordered morphine, he was given morphine the first night he was in.

Q. Was he given morphine more than once?

A. No he was not, just once.

Q. And how did he seem to rest that first night?

A. Well, fairly well after he had gotten the morphine.

Q. How long did he remain in the hospital at that time?

396 A. Well, I don't remember just exactly, I think he was there for two nights the first time he was there.

Q. The second night do you recall whether or not any morphine was administered to him?

A. No, I know there was no morphine administered but I do not remember just what kind of a night he had; I know he didn't get any morphine.

Q. Do you know whether or not he complained of pain during the rest of the time he was there on the first occasion?

A. No, he didn't.

Q. Did he leave the hospital after being there two nights and a day? 397

A. Yes, I think he did.

Q. Do you remember when it was, if at all, that he returned to the hospital?

A. I don't remember what day it was.

Q. About how long after he had been there the first time?

A. I don't just remember how long it was.

Q. Well, when he came to the hospital the second time do you remember about how long he remained there? 398

A. No, I don't know how long he was there.

Q. Did he remain in the hospital until the time of his death?

A. Yes, he did.

Q. Did you have charge of the floor at night?

A. At night I had charge of the floor.

Q. During all the time that he remained there?

A. Yes.

Q. Do you recall whether or not he complained of suffering any pain during the second time he 399 was at the hospital, up to the time of his death?

A. Well, not as far as I can remember he never complained of any actual pain, of course he was always more or less uncomfortable, but he never complained of any pain that I remember of.

Q. Do you remember whether or not any morphine was administered to him during the second time at the hospital?

A. Not that I know of, I don't remember of any

Q. I think that is all.

CROSS-EXAMINATION.

400 By Mr. Ernest A. Michel:

Q. Miss Phillips, during the time that Mr. Ring was in the hospital you say that you had charge of one of the floors?

A. At night, yes.

Q. You were not in charge of Mr. Ring?

A. No, I had the floor in general, he was on general.

Q. About how many patients did you have to look after in addition to Mr. Ring?

401 A. I don't know, I remember that we were quite busy at the time, I really couldn't say just how many patients.

Q. Could you give us approximately the number—would you say in the neighborhood of twenty?

A. Around twenty anyway.

Q. That would be your best judgment, about twenty?

A. Yes.

402 Q. About how often each night would you see each patient?

A. Well of course they always rang their bells whenever they wanted anything, sicker patients needed more attention, some slept all night and some needed—they were all—I really don't know just how often each patient—

Q. In your work you would see the patients each night as they would call for you?

A. Well, we always went around too, you know, made sort of the rounds.

Q. About how often would you make the rounds, or make the calls? 403

A. We didn't have any certain time, don't you know,—like if we were going down the hall, it might be every hour, we would look in at the patients.

Q. I want to get a general idea of what you were doing—you would go around during the evening generally and observed the different patients, sometimes you might see the patient every fifteen minutes and sometimes you might not see the patient for two or three hours? 404

A. Yes.

Q. And the patients that complained the most you would probably see the most often, and unless the patient would call for you during the night or ring the bell that he had you wouldn't see that patient at all except as you made a sort of general inspection?

A. Around, yes.

Q. Did you make a record of your doings and the condition of each patient during the time that Mr. Ring was in the hospital? 405

A. Well, the charts were kept, every patient has a chart.

Q. When you were working did you keep a chart for Mr. Ring showing his condition and the treatment you had given him?

A. Yes.

Q. And on this chart you would indicate for instance if you had given the patient an opiate such as morphine?

A. Yes.

Q. And on which you also indicate his condi-
406 tion as to being restless, or as to whether he slept well?

A. Yes.

Q. And you made such a record during the time that Mr. Ring was in the hospital so far as relates to the time you were on duty?

A. Yes.

Q. Have you that record with you?

A. Why, no.

Q. Where is that record?

407 A. I think the hospital keeps all the records.

Q. You think that is still at the hospital?

A. I think so.

Q. At what hospital?

A. Mercy Hospital.

Q. In the City of Dubuque, Iowa?

A. Yes, sir.

Q. Who was the physician in attendance upon Mr. Ring?

A. Dr. Pond.

408 Q. Is the physician from whom you received your instructions as to what should be done with Mr. Ring?

A. Yes.

Q. Did you receive from him any instructions as to opiates?

A. No, I didn't.

Q. Did you yourself administer the morphine at the time you stated you believe that he was given morphine?

A. No, I didn't.

Q. Who gave him the morphine?

A. The nurse in charge of the dispensary.

409 Q. What is the name of that nurse?

A. I don't remember who was on duty that night.

Q. I believe you stated in answer to Mr. Lyon's question that Mr. Ring was very restless the first period when he came in there, he couldn't sleep?

A. Yes.

Q. The second night he was there your recollection isn't very clear as to his condition?

410 A. No, I don't remember about the second night.

Q. And of course you are ony giving as to his condition just a general idea of what you can remember of one of a number of patients who were under your care?

A. Yes.

Q. This nurse who was in charge of the dispensary and who administered the opiates, what was her name?

411 A. I don't remember who the nurse was then, what one was on.

Q. You don't know whether that same nurse is still at the hospital or not?

A. If I could remember who it was I could probably tell you but I don't remember who the nurse was that was on duty then.

Q. About how many times, or are you able to tell how many times, you saw Mr. Ring the first two nights he was at the hospital?

A. I don't remember.

Q. You of course, as you stated before, you saw
412 a number of patients during your work and you wouldn't be able to say how many times you saw him?

A. No.

Q. Or would you be able to remember what, if anything, he said?

A. No, I don't remember.

Q. And this would also be true of the second period when he came back, which I believe was about October 11th, and he remained until about
413 the 15th, that would be true, would it not?

A. Yes.

Q. Do you ever remember of seeing the lady who sits by me here who is Mrs. Ring, who is the wife of the man who was in the hospital, do you remember of seeing her at the hospital?

A. No, I don't know if I remember her or not.

Q. You say you don't remember whether you saw her there or not—your memory is somewhat hazy as to the whole matter, is it not?

414 A. Yes.

RE-DIRECT EXAMINATION.

By Mr. Lyon:

Q. When did you, if at all, last see the chart of the patient Ring that was made at the time?

A. When I had charge of the chart.

Q. When did you see, if anything, you wrote or kept on the chart that you don't recall?

A. The charts are kept at the hospital, I don't know if anyone else has them or not.

RE-CROSS-EXAMINATION.

415

By Mr. Michel:

Q. Miss Phillips, when did you first know that you were to be a witness at this hearing?

A. I don't remember the day it was—it was some time ago that the Sisters at the hospital told us about it—I couldn't tell you.

Q. Was it two weeks ago or a month ago?

A. It seems like it must be two or three weeks ago.

Q. And up until that time you had no opportunity again to have called to your attention anything about Mr. Ring? 416

A. No, I never.

Testimony of Mildred Kinney, in the county of Dubuque, state of Iowa, taken before Walter Koerner, a notary public, by virtue of the notice hereto attached as stated in the return thereto.

417

DIRECT EXAMINATION.

By Mr. Geo. T. Lyon:

Q. Please state your name?

A. Mildred Kinney.

Q. Where do you live?

A. Winthrop, Iowa.

Q. Where are you employed?

A. At the Mercy Hospital.

Q. How long have you been employed there?

A. Three years in September.

Q. In what capacity?

418 A. As a nurse, student nurse.

Q. And you were employed at the Mercy Hospital in Dubuque on or about the 4th of October, 1922?

A. Yes.

Q. Do you remember a patient by the name of Edmund Ludwig Ring being brought to the hospital?

A. Yes.

Q. Did you have anything to do with his care

419 in the capacity of a nurse while he was there?

A. Yes, in the day time.

Q. Was he at the hospital on more than one occasion?

A. Yes.

Q. How many?

A. On two different ones that I know of.

Q. On the first occasion when he was brought to the hospital do you remember whether or not he complained of suffering and pain?

420 A. I can't recall very much when he first came, it was mostly on the second time that he was there that I took care of him.

Q. Did you take care of him the first time when he was there?

A. No, I didn't, but I had charge of the floor and I remember when he came in, but I don't remember which nurse took care of him.

Q. Do you remember how hong he stayed there on the first occasion?

A. Not exactly, but I think two nights and a day, if I recall.

Q. Do you know personally whether any opiates were administered to him during the first time that he was at the hospital? 421

A. I saw the chart this morning.

Mr. Michel: Don't state what you saw from the start.

A. There was one hypodermic of morphine that was given that I know of.

Q. Is that all the opiates that were administered to him so far as you know?

A. Yes.

Q. Do you know how he left the hospital? 422

A. Do you mean the way he left? No, I couldn't state as to that.

Q. I mean the first time?

A. He wasn't carried out, I don't think—he wasn't taken in the ambulance, I know.

Q. He was able to move himself?

A. Yes.

Q. Do you remember how long it was after he left the first time when he returned?

A. Not definitely, I don't, probably two weeks, something like that. 423

Q. Do you recall, Miss Kinney, about how long he was at the hospital the second time, before he died?

A. I think around two weeks, ten days or two weeks so far as I know.

Q. And during the time that he was in the hospital you had charge of the floor on which he was located?

A. Yes.

Q. During the day time?

A. Yes.

424 Q. Did you keep the chart of his condition during that time?

A. Practically all the time I did.

Q. Do you recall, Miss Kinney, whether or not any opiates were administered to him during his second time at the hospital?

A. No, I don't think there were any given him.

Q. Do you recall whether or not he complained of suffering any pain during that time?

425 A. Not especially, no, he was uncomfortable most of the time but he never complained of any severe pain or any pain to speak of.

Q. How did he seem to rest as a general proposition during that time?

A. Well, he used to sleep quite a bit in the day time, not all the time but at different intervals he would take little naps.

Q. Was there any other nurse who assisted you during the day?

426 A. O, yes, several.

Q. You mean with his care?

A. Different ones—just whoever I happened to meet that was around I would ask them to help me.

CROSS-EXAMINATION.

By Mr. Michel:

Read by Mr. Michel.

Q. You say, Miss Kinney, that you are still a student at the hospital?

A. I have graduated but I am still there until fall.

Q. Until fall, as a part of your general training?

427

A. Yes.

Q. Is that the way that institution is conducted, and you say the first time he was in there you don't recall very much about the man?

A. No.

Q. Up until say a couple of weeks ago you had no occasion to recall this particular man, did you?

A. No, I didn't.

Q. There was nothing unusual about his case that would fix anything particularly definite in your mind as to him?

428

A. No, I can't say that there was.

Q. Would you be able now to describe the man?

A. His general condition?

Q. General appearance of Mr. Ring, weight, height, color of his hair and eyes?

A. I don't believe I would, a very accurate description of him.

Q. You don't think you could,—you wouldn't swear that he didn't complain of pain?

429

A. I don't know so very much about the first time he was there.

Q. You wouldn't want to swear on your oath that he didn't complain of pain those two days?

A. No.

Q. Was he in the ward or private room?

A. Ward both times.

Q. About how many people were there in the ward?

A. Two—different beds, his bed and another patient's bed.

Q. You spoke of opiates; now in your exper-
430 ience I presume you have run across different classes of patients, some patients complain a great deal and others are more phlegmatic and don't complain very much, that's true is it not?

A. Yes.

Q. And Mr. Ring you say was of the type that don't complain a great deal?

A. Yes.

Q. But he did appear to you to be uncomfortable most of the time?

431 A. Yes.

Q. The name of the nurse who gave him the opiates, do you know that?

A. I think it was Miss Keefe, if I am not mistaken, I am not positive but I think that was the nurse.

Q. Do you know if he was given anything else to induce sleep, anything such as veranol, or bromides, or anything of that kind?

A. Not that I recall.

432 Q. Do you recall as to his body, as to whether he was bandaged or strapped with adhesive tape?

A. I don't believe I remember about that.

Q. Do you ever remember of seeing the lady who sits back of me, who is Mrs. Ring?

A. Yes, I do.

Q. Do you remember of seeing her at the hospital?

A. Yes.

Q. Do you ever recall being there when Mrs. Ring was there, when an opiate was given to him?

A. No, I don't.

Q. And you first knew you were going to be a witness in this case about two weeks ago? 433

A. I think that's about the time.

Q. And up until that time you had nothing in particular to call this man's condition to your attention?

A. No.

Q. That's all.

RE-DIRECT EXAMINATION.

By Mr. Lyon: 434

Q. You say you did look at the chart this morning?

A. Yes, sir.

Q. Did that refresh your memory as to what you did?

A. Well, somewhat it did, but I remembered pretty much what I did for him before that.

Q. So that you recall this patient clearly?

A. Yes.

435

RE-CROSS-EXAMINATION.

By Mr. Michel:

Q. You don't mean to say now that you remember him clearly?

A. I don't remember everything exactly clear as if it happened yesterday, but I remember the case.

Q. And you remember that there was such a man as Mr. Ring there and you attended him?

A. Yes, and this trouble.

Q. Don't you know as a matter of fact that he
436 was bandaged over his abdomen with adhesive tape?

A. I can't recall that.

Q. Would you know that if that were a fact?

A. I probably would at the time, but I don't remember whether he was strapped or not.

Q. Well, you do remember clearly that Mr. Ring was there, so that the record will be straight, you don't claim to remember everything that he said or other detail as to his condition, do you?

437 A. No.

Q. And during the time that he was there you would give him baths or rubs, or anything of that kind?

A. Yes.

Q. And if you did anything of that kind of course if he were strapped with adhesive tape you would learn that fact, would you not?

A. Yes.

Q. And you would say now that you don't re-
438 member whether there was such adhesive tape over his abdomen or not?

A. No, I don't.

Q. You also say, as did the other lady who testified, that you attend to a number of people in the hospital there in October did you not?

A. Yes.

Q. And you don't make any pretense to remember everything that was said, or exactly his condition at all times?

A. No.

Testimony of Elizabeth Cahill, in the county of Dubuque, state of Iowa, taken before Walter Koerner, a notary public, by virtue of the notice hereto attached as stated in the return thereto. 439

DIRECT EXAMINATION.

By Mr. Geo. T. Lyon:

Q. Please state your name?

A. Elizabeth Cahill.

Q. Where do you live, Miss Cahill?

A. Lamont, Iowa.

Q. What, if any, work do you do? 440

A. I have been a student nurse at Mercy hospital.

Q. How long have you been working in that capacity?

A. Two years this coming September.

Q. Were you at Mercy Hospital on or about the 4th of October, 1922?

A. Yes, sir.

Q. Do you remember of a patient by the name of Edmund Ludwig Ring? 441

A. Yes, sir.

Q. In your capacity as student nurse did you care for him?

A. Yes, sir.

Q. During the night or day were you on?

A. Miss Kinney was senior on the floor and I was second senior, if I remember correctly, and when she was gone on her hours I was next to oversee the patients, that's about as I remember.

Q. Did you care for Mr. Ring during both of the times that he was at the hospital?

A. No, sir, just the last time.

442 Q. And how frequently if you recall, did you see him during the last time that he was there?

A. Well, if I was on the floor I would imagine about once every hour, or maybe oftener.

Q. Do you know whether or not any opiates were ever administered to Ring while he was there?

A. No, not that I know of.

Q. During the time that you were working on the floor where he was confined do you remember of his complaining of his suffering pain?

443 A. No, I don't, he was uncomfortable, but never complained of any pain that I know of.

Q. Do you remember, Miss Cahill, about how long he was at the hospital the second time before he died?

A. I couldn't state that.

Q. Approximately?

A. Well, I wouldn't like to say because I wouldn't be sure.

Q. But during the time he was there would you

444 see him more or less every day?

A. Yes.

CROSS-EXAMINATION.

By Mr. Michel:

Q. How do you know he was uncomfortable?

A. He complained of being uncomfortable.

Q. How often?

A. Well, I wouldn't say that every time I went in he was uncomfortable, but as a rule.

Q. And you judge he was uncomfortable by the complaints he made to you?

A. Yes.

Q. Where or in what part of his body would he indicate that the discomfort was, or would he indicate where he was uncomfortable? 445

A. He wouldn't say, he didn't state.

Q. What do you recall that he said or did that indicated to you that he was uncomfortable?

A. Sometimes I would be in he would seem pretty good and other times he was discouraged, seemed very uncomfortable.

Q. Seemed very uncomfortable?

A. Yes. 446

Q. That was his condition on or about the 15th of October when he came back, that was about the time he came back, wasn't it?

A. Yes.

Q. Then he died about the 21st?

A. I imagine it was about that.

Q. During that time was when you said that he complained of being uncomfortable?

A. Yes.

Q. And during the time that you saw him was 447 in the day time?

A. In the day time, yes.

Q. And part of that time Miss Kinney was also on duty?

A. Yes, sir.

Q. And you, I believe, are in training at this hospital?

A. Yes, sir.

Q. You are a student nurse?

A. Yes, sir.

Q. And about when will you complete your
448 course at this hospital?

A. A year from this September.

Q. You stated on your direct examination that he had been administered no opiates that you knew of, you had in mind, did you, the administration of opiates as testified to by Miss Kinney, or did you refer solely to matters that came under your personal observation?

A. I don't quite understand.

Q. Miss Kinney, I believe, stated that so far as
449 she recalled there was at least one time that he was given some morphine or drug to quiet him or induce sleep,—you have no personal recollection of that?

A. No, I haven't.

Q. When did you first know you were going to be a witness in this case?

A. Yesterday afternoon.

Q. And up until that time you had nothing in particular to call this man to your attention?

450 A. No.

Q. And you don't pretend to remember everything that the man did during the times you observed him at the hospital, do you?

A. No, I don't.

Q. Nor what he said?

A. No.

Q. In fact, you wouldn't be able to give us a very accurate description of the man, would you?

A. No.

A. M. POND,

451 was called as a witness on behalf of the defendant and duly sworn.

DIRECT EXAMINATION.

By Mr. Briggs:

Q. Doctor, what is your profession?

A. I am a physician and surgeon.

Q. How long have you been a physician and surgeon?

A. 32 years. 452

Q. Where are you located?

A. Dubuque, Iowa.

Q. Where did you study?

A. In the University of the City of New York, and the University of Iowa.

Q. Did you spend any time in Europe?

A. Eighteen months in Europe.

Q. Where?

A. Berlin, Leipzig, Heidelberg, Edinburg, Scotland, Paris. 453

Q. Your specialty is surgery?

A. Surgery and surgical pathology, yes, sir.

Q. Did you know Mr. Ring, the deceased, who has been mentioned in this trial?

A. Yes, sir.

Q. Tell us when you first met him and under what circumstances?

A. I met him one evening about eight o'clock, I would judge, along the fore part of the evening, anyway. I went down to the Great Western station on a call from the dispatcher. I went into the

caboose and found the man Ring in the bunk, and
454 the conductor,—I asked the conductor where was the injured man, and he took me over to this bunk. I do not remember of ever seeing Mr. Ring before. I stepped down and said, hello, and he says hello; and I says, where are you hurt, and he says right in the belly. I says how did you get hurt? He said, I got caught by a chain. Well, I says, are you in a great deal of pain now? and I took his pulse, the pulse at that time was 76.

Q. What is normal?

455 A. Oh, from 72 to 78. I says, how do you feel? He says, I feel better now. I says, have you vomited? He says, I just vomited. I asked the conductor who was there and another gentleman that I didn't know at that time, but I have learned since that his name was Quist, if he had vomited, emptied his stomach, the stomach contents, of food; I asked if there was any blood, and he said no. I asked him if he was in pain then, and he said, I am not in pain exactly, but I feel tough. I
456 asked him if he was able to get out to the car and get into my car, and he said yes. I don't remember whether I helped him; it occurs to me now that he had his shoes off and they helped him find his shoes and get his shoes on. And he got up and I preceded him, I went ahead of him, and he came down out of the car and down the steps, and walked across the platform, and Dr. De Lacroix, who accompanied me, was on one side of him and I was on the other side of him. I may have had hold of his arm, but he was going under his own power,

and he was not in apparently any great discomfort.

457 I got him to the hospital, and my first impression after I got his clothes off from him was that he had a broken rib; if he had a fragment of a rib turned in, that would cause some trouble, some damage, and that is why I put on this adhesive tape that you have heard about. I put on two pieces of adhesive tape to hold this side of him, he was having a hard time breathing. Every time he breathed this would pain him, this would hurt, and then he would be uncomfortable. I put this ad- 458 hesive strap on thinking probably he might have had a fractured rib, or may have had an injury to the bones of the back. We got him to the hospital and got his clothes off from him and got him into bed, and then I examined him thoroughly to find marks, if any, on his body; what we call hyperemia. It is not an inflammation, it is just a dilatation of the blood vessels of the skin, or if you pinch yourself you can get red; and that showed across the fore part on the right side of the abdo- 459 men, right about here (indicating). On the back there was another little streak of red, and that extended directly opposite from the one in front.

And then I put on this adhesive tape, as I say, to make it easier for him to breathe, and if there was a broken rib there, to hold it into position, and ordered him to the X-ray room next morning. I wanted to know what damage there was done to the bony structure of this man's body. As I left the room where he was I stepped into the nurse's

room, or the order-room, as we call it, and I wrote
460 on the chart.

Mr. Davis: We will object to what he wrote as not the best evidence, and hearsay.

A. I ordered a dose of morphia, one-quarter grain, if required, for pain.

Q. That was the first night?

A. That was the first night. I saw him the next morning, I stepped into the record-room and read the record, which indicated—

Mr. Davis: Don't state what the record showed,
461 the record isn't here, you can't state that, doctor, objected to as hearsay and self-serving.

No ruling.

Q. Just state what you did and saw?

A. Well, I recollect that he had been given this dose of morphia, one-quarter grain, and that afterwards he had a comfortable night. At that time he was taken to the X-ray room,he had been refused food up to that time and until after he came back from the X-ray. I didn't want to get any picture
462 of the food, I didn't want to get any more obstruction to the picture than I could help. I let him have his breakfast. I saw him in the afternoon and he wanted to know when he could go home. I asked him how he felt, he said I feel pretty good. I said, I can see no reason why you couldn't go home if you want to. He says, will you arrange for my transportation? I says, yes.

I got a report of the X-ray, there was no—

Mr. Davis: I object to the report of the X-ray as not the best evidence, hearsay and self-serving.

No ruling.

Q. Doctor, what was your conclusion as to his condition at that time? 463

A. I concluded that there was no broken rib, no broken bone in his body, that there was no evidence that he had suffered a very severe injury, and notified the claim agent that he would be able to give a statement.

Mr. Davis: Objected to as self-serving and immaterial and incompetent.

Court: Objection sustained.

A. Well, the next morning I gave him my permission to go home when he got ready, and I would 464 help him get some transportation. That is the last time I saw him the first trip.

Q. Did he leave the hospital then?

A. He left the hospital, I don't know when he left the hospital; he was not there that evening.

Q. When did you next see him?

A. The next time I saw him was Sunday afternoon, October 15, 1922, at the Chicago & Great Western station.

Q. What was his condition at that time? 465

A. He was accompanied by a lady whom he introduced to me as his wife. I helped them into my automobile and took them again to Mercy Hospital, and admitted him there for the second time.

Q. Sunday afternoon?

A. Sunday afternoon.

Q. Do you remember what day it was that he came to the hospital the first time?

A. Wednesday, I believe.

Q. Wednesday night?

A. I believe it was Wednesday evening.

Q. Which Sunday after that Wednesday was
466 it he returned?

A. Oh, it would be Wednesday, the 4th of October, if I remember correctly, and it would be Sunday, the 15th—it would be a week from the following Sunday, that would be about ten days.

Q. About 10-11 days?

A. 10-11 days.

Q. What was his condition upon his return?

A. His condition wasn't as good as it was when he went away.

467 Q. In what respect?

A. Well, when he left me, the last time I saw him he was standing erect and walking very well; as he approached me from the car he was stooped. I got him into my car and drove to the hospital, and I asked him in driving if the jar of the car hurt him, and he said no. I didn't drive very fast, I tried to make it as easy for him as I could; it is a very hilly town, I drove as cautiously and as carefully as I could. I got him to the hospital
468 I should judge about four o'clock, he was admitted and put to bed.

Q. Did you see him after that on how many times?

A. Oh, I saw him every day, I saw him three or four times a day.

Q. What was his condition during that time, pulse, respiration, temperature?

A. His pulse would vary, his pulse would vary from normal—and what I mean by normal would be about 72 to 76—at one time I saw him his pulse.

—I found his pulse at 110, but that was unusual for a man that had the injury that he had.

469

Q. Did it vary in between those figures?

A. Yes, it would vary.

Q. How about his temperature?

A. The first temperature I took was about 96 or 97, 97.6, if I remember correctly, that is slightly below normal. The highest temperature that I saw was 100, possibly 100.1—we measure those by tenths.

Q. Was that the first time he was there, the first time he was there?

470

A. The temperature that I am speaking of now?

Q. Yes.

A. Well, the first temperature of over 100 that I saw was the first night he was there.

Q. It never reached 100 after that?

A. No.

Q. How was his temperature during the last time?

A. The temperature during the last period was quite consistenly subnormal. 471

Q. Consistently,—would it indicate any serious condition?

A. Yes, it always indicates a serious condition, a subnormal temperature always indicates a serious condition.

Q. What was his respiration?

A. His respiration didn't vary so greatly; his respiration,—the normal man breathes about 18 to 20 times a minute, and his beathing was not far

from that time; along towards the last it grew
472 rapid, 30 maybe, 36.

Q. What complaint did he make to you of pain and suffering?

A. I can't say that he ever used the word "pain" —he would say that he felt uncomfortable, and I would ask him how, and he would say he felt full, and put his hand over his abdomen, here, (indicating), or he felt nauseated, he felt sick to his stomach, that's the way he used to put it. I don't recall that he ever used the word "pain."

473 Q. Was there anything done for this nausea that he complained of?

A. Yes.

Q. What?

A. Why, we washed the stomach out.

Q. And what would result?

A. There would be relief; I think every time that we washed that stomach out he would say that he felt better.

Q. Did you after his death assist in an autopsy?

474 A. Yes.

Q. And did you determine what his real trouble was?

A. I determined what the findings were at the autopsy.

Q. Well, to your own satisfaction, did you come to a conclusion?

A. Yes.

Q. Did the other doctors agree with you?

Mr. Davis: Objected to as heasay, incompetent, irrelevant and immaterial.

No ruling.

Q. Well, what conclusion did you come to as to what the injury he received was? 475

A. My deduction from this autopsy and post-mortem examination,—my deduction from this autopsy was that this man died from a bruising of one of the largest veins of the abdomen, what we call the superior mesenteric vein; the largest vein, —one of the largest veins in the abdomen is the vein that leads from the intestines into the liver, and that vein is probably the size of my finger there (indicating), and this mesenteric vein is probably the size of that finger (indicating), and 476 about an inch from this portal vein.

This mesenteric vein that I speak of had been bruised sufficiently, the thin lining membrane, the little, fine, tender delicate membrane of that vein had been crushed or broken or bruised or contused until the ends had separated and the ends curled, causing a clotting of blood, and completely stoping any drainage of blood from the entire intestines, because all of our intestines are supplied by the mesenteric artery and they are all drained by 477 the mesenteric vein; this artery goes into a large hand-like membrane, you have seen it perhaps in hogs, and that artery and vein go in side by side. The artery gives the arterial blood to all the intestines, and all of those thin fine capillaries collect that blood and draw it back and then discharge that blood into this large vein, that discharges it into the portal vein and goes into the liver. And this vein just before it goes from the portal vein was bruised so the ends curled in each direction.

causing that clotting, and the intestine was not being drained from its arterial blood.

478 Q. There are two kinds of nerves?

A. Yes.

Q. Motor nerves and sensory nerves?

A. Motor nerves and sensory nerves.

Q. Tell us what nerves were injured by this and what effect it would have upon the sensory nerves?

A. The venous stasis, the venous stagnation, of course would prevent any intestinal movement.

479 Q. That would mean stoppage of blood?

A. Yes, because you have got to have good circulation before you can have any movement. As long as the circulation was not good, the arterial blood was not impaired, but the drainage of that arterial blood was impaired, and we had a complete intestinal stasis. I mean by that a complete relaxation, no movement in the intestines. Although we didn't get a bowel movement, having intestinal stasis, I gave hypodermic injection of

480 atropin to stimulate, helping to stimulate that intestinal cavity, and we would wash his stomach out and relive the fulness; that is, he couldn't get motion in his abdomen, but there was no mucous membrane of the stomach injured, and there was no mucous membrane of any intestine injured, there was nothing of that kind that showed in the X-ray findings.

Mr. Davis: We object to the last statement of the doctor as heasay.

Mr. Briggs: That may be stricken.

Q. Doctor, you spoke about atropin?

A. Atropin, that was given hypodermically. 481

Q. More than once?

A. Oh, yes, every four hours.

Q. Was there any morphia in that?

A. No, sir.

Q. When, if ever, except that first night was there any morphine given?

A. He was never given but one dose of morphine, and I was there in the hospital both times; he was given that the first night he was in the first time.

482

Q. Was there any sedative or narcotic given to relieve pain at any time?

A. No, sir.

Q. And this other drug that is spoken of was given for what purpose?

A. To help stimulate those intestines to regain his activity. Of course I had no positive knowledge of what did happen, I knew that there had been a contusion of that abdomen; he might have had a little tear in the stomach or intestine, I 483 didn't know. I was pretty near reasonably sure that it would—that he had intestinal paralysis. I hoped that the atropin would stimulate that intestinal activity so that this boy's bowels would move and relieve him nauseating, this nauseating and vomiting was due to a paralysis or stasis of the intestines.

Q. While he was there under your care either the first or last time, did he vomit any blood?

A. I never saw him vomit blood, and never was informed that he vomited blood.

Q. From the injuries that you observed was
484 there any reason why he should vomit blood?

A. No.

Q. Why?

A. Because there was no injury to the mucous membrane, there was no injury to the stomach wall or the intestinal wall. I mean that we learned that from the condition that we found after death, from this postmortem examination.

Q. Have you told us all the complaints he made to you of pain and suffering?

485 A. He would frequently say that he felt tough, that he felt sick to his stomach, and that he felt full; those were the words that he made to me, those were the words that he said to me.

Q. Did he ever use the word "hurt"?

A. Not that I recall, I don't remember.

CROSS-EXAMINATION.

By Mr. Davis:

Q. Doctor Pond, if a man says he feels tough,
486 does it indicate that he is suffering any pain, to you?

A. Not necessarily, sir.

Q. When you know a man to be hurt, as you know this man had been hurt,—he told you he had been hurt?

A. He said he was caught by a chain.

Q. Didn't that indicate to you that he was suffering any pain, that he would tell you that he felt tough, at all?

A. In fact, I had asked him if he was in pain, and he said no, he was not.

Q. Do you mean to tell this jury that you asked him every day if he was in pain? 487

A. I usually made it a point to ask him how he felt.

Q. He answered that he felt tough, didn't he?

A. Not every time, I think he only used the word "tough" once.

Q. What other word did he use?

A. He said he would feel nauseated, and he would feel full.

Q. When he first came in you took an X-ray, didn't you? 488

A. I did not, I ordered it to be done.

Q. And you looked at it, you examined it?

A. I examined it.

Q. An X-ray is taking a picture of the inside?

A. Yes, sir.

Q. And that would show the condition of the bones as well as the condition of the abdomen, would it?

A. It would show nothing at all but the bones.

Q. It wouldn't show any condition of the abdomen? 489

A. Not in the condition that he was in, he was not prepared for an extra intestinal tract examination.

Q. You presumed, after learning how he was hurt, that he had received some injury to the abdomen, didn't you?

A. I hadn't made up my mind, sir, I was simply anticipating—I wanted to know, I wanted to be sure.

Q. There is a way to take an X-ray of the abdo-
490 men showing its condition, isn't there?

A. Yes.

Q. You didn't take any?

A. Not at the first time I did not.

Q. Did you the second?

A. Yes, sir.

Q. When?

A. Somehow I didn't enter the exact time.

Q. Where are the X-rays?

A. They are at Dubuque, I think, at Mercy Hos-
491 pital.

Q. When did you last see them?

A. I haven't seen them since I examined them and passed an opinion on them to get my working diagnosis when Mr. Ring was entered.

Q. You haven't seen them since?

A. No, sir.

Q. And you haven't them here so other doctors can examine them?

A. No.

492 Q. They are at Mercy Hospital?

A. I don't know.

Q. It is usual to keep them there?

A. Yes, sir.

Q. You of course could have got them here by inquiring or asking the hospital for them?

A. I doubt it, I don't believe they allow those plates to get out of that place.

Q. Do you mean to say that you couldn't get those plates out of the hospital?

A. No, I don't believe I could get those plates out of the hospital; I might have copies made.

Q. You could have done that?

A. Possibly.

493 Q. Doctor Pond, you made up your mind when he was there first that he had a contusion of the abdomen, didn't you?

A. I knew that.

Q. You also stated that he had an intestinal paralysis, you learned that?

A. I did not know that, I was suspicious of that, that would be a natural consequence after suffering a blow on the abdomen.

494 Q. And that was when he was there the first time?

A. No, sir, my suspicions were aroused the first time that he might have had some structural damage to the bony parts of his body.

Q. Did he vomit when he was there?

A. Not in the hospital when I knew of it.

Q. You knew he had vomited before he got there that first time?

A. I knew he had in the caboose.

495 Q. The first time?

A. Yes.

Q. Would that be an indication that he might have a contusion of the abdomen?

A. Why, you may be talking about a contusion—

Q. I ask you if after vomiting, and knowing he had received an injury, would that be no indication that he had received a contusion of the abomen?

A. It might be.

Q. Would it be any evidence of intestinal par-
496 alysis?

A. It might be.

Q. But you took no X-ray of his abdomen for the purpose of showing whether there was any injury other than to the bone the first time, did you?

A. I ordered the customary X-ray examination of the lower chest and abdomen.

Q. But you took no X-ray for the purpose of showing the abdomen?

A. I didn't take any X-ray of the abdomen.

497 Q. And you didn't order any X-ray examination of the abdomen?

A. I ordered an X-ray of the lower chest and abdomen.

Q. Did you order an X-ray of the abdomen for the purpose of showing from an X-ray of the abdomen the condition of the abdomen, aside from any broken bones, the first time?

A. I ordered an X-ray of the lower chest and abdomen, to determine whatever the X-ray might
498 show me.

Q. Did you have an X-ray taken of the abdomen for the purpose of showing the condition of the abdomen apart from any broken bones, when he was there the first time?

A. No, sir.

Q. In washing the stomach out, how is that done, doctor?

A. Usually by a soft rubber tube, larger than my lead pencil, perhaps as large as that (indicating), possibly five feet long, perhaps longer. We

would hold the tongue forward, wash the mucous membrane of the throat, and then pass this tube 499
that had been immersed in cold water, pass this tube quickly into his stomach, and then we would fill this tube up with water from a pitcher until he would wave to us that he was not comfortable, and then we would cover the end of the tube and then the fluid would siphon itself out into a pail.

Q. Dr. Pond, as a physician and surgeon, is it your opinion that Mr. Ring died as a result of blood coming from the intestines becoming clotted, and that this condition was brought about by rea- 500
son of the injury he received, that is true, is it?

A. No, sir.

Q. Did the blood become clotted?

A. The blood became clotted.

Q. In the intestines?

A. No, sir.

Q. It didn't?

A. No, sir.

Q. Not in the intestines?

A. No, sir. 501

Q. Did the blood coming from the intestines become clotted?

A. The blood that is drained from the intestines by the vein became clotted, yes, sir.

Q. I will ask you if it isn't your opinion, doctor, as a physician and surgeon, that this condition of the blood coming from the intestines being clotted causing his death, was not produced by the injury he received?

A. It was produced by an injury, that is, a trauma.

Q. You knew he received that trauma on the
502 4th of October?

A. I knew he received that injury on the 4th of October.

Q. You knew of no other injury that could produce it—produce that condition?

A. I do not.

Q. Not knowing of any other injury that could produce that condition, I will ask you as a physician and surgeon if it isn't your opinion that the injury which he did receive, which you found that
503 he had received, was what produced his death?

A. In my opinion, yes.

RE-DIRECT EXAMINATION.

By Mr. Briggs:

Q. When Ring came there the first time what did he say, if anything, about going home the day after he came?

A. He wanted to go home the next morning.

Q. What did he say as to his condition?

504 A. I don't recall that he said anything about it, he wanted to go, and I told him that I thought he better stay there that day, I wanted to keep him under observation for a little while.

Q. And he stayed because you wanted him to?

Mr. Davis: Objected to as suggestive and argumentative.

Mr. Briggs: Question withdrawn.

Recess till 2 p. m.

Mr. Briggs: Defendant rests.

Mr. Davis: Plaintiff rests.

Mr. Briggs: Defendant makes a motion that the court direct the jury to return a verdict in favor of the defendant on the ground that no cause of action has been proven, that the defective condition of the car was not the proximate cause of the injury and that defendant was not using, hauling or permitting to be used or hauled on its line a defective car at the time of the accident. And that the negligence of the deceased in being between the cars without first notifying the engine crew or head brakeman was the cause of the accident. 505 506

Court: Motion denied.

Mr. Briggs: Exception.

Mr. Briggs argued the case to the jury on behalf of the defendant and Mr. Davis on behalf of the plaintiff.

CHARGE OF THE COURT.

Gentlemen of the Jury:

You have been chosen as a jury to try this case and determine the facts. As a jury it is your exclusive duty to determine the facts. It is for you to say what the facts are, and it is for you to weigh the evidence and to say what the evidence weighs. It is for you to determine the credibility of every witness; you have a right and it is your duty to take into consideration the manner in which witnesses give their testimony, the interest, if they have any, in the outcome of the case, and whether or not that interest has colored or warped 507

their testimony; the opportunities they have of
508 knowing the subject about which they are testifying, and to use your common sense and reason as men of common sense and reason and determine the questions of fact as submitted to you and to take the law as given you by the court.

This is an action brought by A. D. Schendel as special administrator of the estate of Edmund Ludwig Ring, deceased, as plaintiff, against the Chicago & Great Western Railroad Company as defendant, to recover damages for the death of
509 Edmund Ludwig Ring while in the employ of the defendant as a brakeman on its line of railroad near the village of Budd, Iowa. The action is brought by A. D. Schendel in his capacity as administrator for the benefit of the surviving widow and minor child of Edmund Ludwig Ring. Plaintiff bases his right of recovery in this case on two laws of Congress, the first of which is known as the Employers' Liability Law. This law provides that every common carrier, that is, a railroad, en-
510 gaged in interstate commerce, or a railroad engaged in trade or commerce between the several states, shall be liable to any of its employees also engaged in interstate commerce, or in the case of the death of such employee, to his personal representative for the benefit of his widow and children, for all damages which result in whole or in part through the negligence or fault of the officers, agents or employees of said common carrier, or by reason of any defect due to its negligence in its cars, appliances, machinery, and so forth.

The plaintiff further claims that the defendant in this case was guilty of violating a certain other 511
law or statute of Congress, known as An Act to promote the Safety of Employees and Travelers upon Railroads, by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes, their locomotives with driving wheel brakes, and for other purposes. Under the terms of this Act Congress provided that "it shall be unlawful for any such common carrier to haul or permit to be hauled or used on its lines any car 512
used in moving any such traffic not equipped with couplers coupling automatically by impact and which can be uncoupled without the necessity of men going between the ends of the cars." These two statutes or acts of Congress to which I have referred, with the amendments thereto, are applicable to the facts in this case, as will be explained to you.

Now, gentlemen, I want to draw your attention to just one or two matters that apply, one is that 513
the fact that the car which was defective or had a defective coupler did not belong to this particular railroad wouldn't be material. I believe that it was an Illinois Central car; and that it, the railroad company, is made negligent as a matter of law in having a defective coupler; also the fact that they were going to move the train on the sidetrack wouldn't be material at this time, or when this accident occurred.

Before you come to the disputed questions of

fact in this case it may be well to point out the
514 facts which are conceded and undisputed. It is undisputed that the plaintiff, A. D. Schendel, is the special administrator of the estate of Edmund Ludwig Ring, deceased, and as such brings this action in behalf of the surviving widow and child of said Edmund Ludwig Ring. It is undisputed that at the time of the accident both Edmund Ring and the defendant railroad company were engaged and working in interstate commerce. It is not disputed that the deceased, Edmund Ludwig Ring,
515 was the sole support of the surviving widow and child; it is not disputed that at the time of the injury to Ring defendant was moving and hauling a certain car the coupler and draw-bar of which was defective.

Plaintiff claims that the defective condition of the coupler and draw-bar in question caused the death of decedent, and that this defect contributed in whole or in part as a proximate cause to the death of the decedent Ring. In other words,
516 gentlemen, the claim of the plaintiff is that the defective coupler and draw-bar was the cause of the death of the brakeman, Edmund Ludwig Ring. Plaintiff further claims that because of the death of Edmund Ring the widow and child of decedent have been deprived of their support and maintenance, and that they have been damaged in the sum of $35,000, as alleged in the complaint.

On the other hand, the defendant claims that the condition of the coupler and draw-bar in question, although it was defective, was not the proxi-

mate cause of the death of Edmund Ludwig Ring,
but that his death was caused by reason of his own 517
act or acts, and that he assumed the risk of the
injury which resulted in his death.

Decedent and the defendant railroad company having been engaged in interstate commerce, the first question for you to determine in this case is whether or not the coupler apparatus was proper and efficient under the law. You have heard the evidence as to that question. If you find that this coupler and draw-bar was in fact defective, then the question for you to determine is whether or 518
not this defect contributed in whole or in part as a proximate cause to the injury and death of Edmund Ludwig Ring.

Under the acts of Congress to which I have referred, it is the absolute and unqualified duty of defendant to equip and maintain its cars with proper and efficient couplers and draw-bars,—automatic couplers that can be coupled without the necessity of men going between the ends of the cars. That duty is an unconditional duty, and the 519
burden was on the defendant to keep the coupling appliances of the car in question in workable and operative condition, so that men having occasion as their duty may have required them, to uncouple cars, would not have to go between the ends of the cars for the purpose of performing that act.

If you find that the coupling appliance on this car, which plaintiff was to uncouple, as disclosed by the evidence in this case, was in fact defective and inoperative, then it will be your duty to determine whether or not the said defect was the proxi-

mate cause of the injury to decedent. Unless the
520 defective condition of the coupling was the proxi-
mate cause of the injury to decedent, the plaintiff
cannot recover. In determining this question you
are to take into account all the evidence in the
case and all the facts and circumstances bearing
on the duties of the decedent and the work to be
done by him at the time of the accident. Did
Edmund Ludwig Ring in the discharge of his
duties go between the ends of the cars for the pur-
pose of uncoupling or separating this car from the
521 other cars and was he injured while doing so, with
resulting death? If you find that because of the
defect deceased did go between the ends of the cars
and did attempt to make the uncoupling, then you
would determine whether or not the defect was
the proximate cause of defendant's injury and
death.

Proximate cause of an injury is that which
causes it directly or immediately, or through a
natural sequence of events, without the interven-
522 tion of any other independent or efficient cause.
The defective coupler may be found to be the
proximate cause of decedent's injury if it was a
direct and immediate cause without which the in-
jury would not have occurred.

If you find from the evidence that the coupler
was defective and that such defect was the proxi-
mate cause of the injury to decedent, then the
plaintiff is entitled to recover. The fact, if it be
a fact, that decedent knew that the coupler was
defective and inoperative, would not prevent recov-

ery in this case. It is alleged in the answer that decedent assumed the risk of his injury. If you 523
find that the coupling apparatus was defective and that defect caused the death of Edmund Ring while he was endeavoring to uncouple this car in the performance of his duty, then the plea of assumption of risk is unavailing to the defendant, and the fact that plaintiff may have known that it was defective would not prevent recovery. Moreover, under the law which I have given you, you cannot consider for any purpose the question of whether or not decedent was himself careless or 524
guilty of contributory negligence. Even if you should find that he was careless and that some act of his contributed to his injury this would not prevent recovery under the laws to which I have referred unless you should find from the evidence that the decedent's act or acts constituted the sole cause of the injury, and that defendant's act in moving or hauling the defective car was no part of the causation.

The burden is upon the plaintiff to prove by a 525
fair preponderance of evidence that the coupler was defective, and that defect was the proximate cause of the injury to Edmund Ludwig Ring. If you find the evidence evenly balanced or that it preponderates in favor of the defendant, then you will find for the defendant. If you find that plaintiff does establish this by a fair preponderance of evidence, you will find for the plaintiff.

If by the rules as I have given them to you you reach the conclusion that plaintiff is entitled to

recover, the next question for you to determine
526 is the amount of damages to be allowed to the plaintiff. Under the law, if in this case plaintiff is entitled to recover, then plaintiff is entitled to recover such damages as you believe from the evidence will fairly and reasonably compensate the surviving widow and child for the actual monetary loss they have sustained. In arriving at that sum you have a right to take into consideration the earning capacity of the decedent and the amount he contributed to such widow and child for their
527 support, care and maintenance. You should first determine what amount he did so contribute; you will then determine from all the testimony about how long such contribution would have continued. Evidence has been introduced in this case to show the normal expectancy of the life of a person 28 years old. This evidence should be considered by you in determining the question, but it isn't necessarily conclusive. A person might live long beyond the period of his normal expectancy or he
528 might die long before such time. It is for you to determine from the evidence the length of time that the decedent would have lived and contributed to the support of the surviving widow and child.

When you have determined that, and you have determined the amount of the annual contribution of the decedent to his widow and child, you will reduce these contributions to their present value. The present value is such sum which if put out at interest at a fair rate would produce for the period of the expectancy the amount of his contribution annually, and with the last payment both the prin-

cipal sum and the interest will be exhausted. In other words, if for example the contribution were one dollar a year for a period of ten years, the jury would find what sum if put out at a reasonable rate of interest would produce one dollar a year for ten years and with the last payment both the principal sums and the interest would be exhausted. 529

Evidence has been introduced in this case showing the present worth of one dollar per year for different periods. This evidence may be considered by you in arriving at the present rate of contribution of decedent, if you come to the question of the damages to be awarded in this case. In considering the question of damages you may take into consideration the evidence which has been introduced upon this question; you are to determine from the evidence what is a reasonable rate of interest as a return for money safely invested. 530

After you determine these questions you are to reduce the amount of the annual contributions to its present value under the rules as I have given them to you, and this sum should represent your verdict in this case, if you find in favor of the plaintiff. Now, in regard to the tables that were introduced, that is, the mortality tables and the table as to the present value of a dollar, and so forth, I wish to say that the so-called mortality tables as well as the tables showing the present value of a dollar have been offered in evidence in this case. These are not conclusive or binding on you, but are for your consideration in case you should find for the plaintiff. 531

In finding the amount to which plaintiff is en-
532 titled to recover, you should in this case as in all others use your best judgment, based on your experience, and render a verdict of such an amount as will compensate the plaintiff for the financial loss and suffering no more and no less.

Plaintiff also claims damages for the pain and suffering of decedent between the time of the injury and his death. I shall not refer or comment upon the evidence in this case as to what this pain and suffering may have been. You have heard the
533 evidence here by the witnesses upon the question of this pain and suffering, and it is for you to determine from all the evidence to what extent decedent suffered as a result of this injury. You are at liberty to take into consideration the pain and suffering endured by decedent that you so find, and award such damages as you may think proper and right, not to exceed the sum of $15,000 as alleged in the complaint.

You are to fairly and impartially weigh and con-
534 sider all the testimony and all the facts and circumstances testified to upon the trial and return a verdict in accordance with the facts as you shall find them and the law as given you by the court. When you retire to your jury-room select one of your number as foreman, and when you have agreed upon your verdict notify the bailiff and he will conduct you back into the court-room.

Court: Are there any suggestions, counsel?

Mr. Davis: I would ask the court to charge the jury that if they in fact had a defective coupler,

that if a rule was violated it was no defense and cannot be considered by the jury. The rules was 535
introduced in evidence and goes to the jury, and for that reason plaintiff would ask the court to charge the jury that if they find that defendant had a defective coupler and that that was the proximate cause of the injury, that they cannot consider the violation of any rule introduced, as that was no defense in this case under the circumstances.

Mr. Briggs: Will the Court require the jury to separate the two findings of pain and contribution 536
and bring in separate amounts, to indicate what their findings are?

Mr. Davis: It is agreeable to us.

Court: Plaintiff has asked me to instruct you that the fact that the company had rules, which rules are in evidence, and that the decedent violated those rules, would not be a defense to the company, or defendant: That, I believe, is a correct interpretation of the law, that will not be a defense, the fact that he violated those rules. In 537
other words, that acts of the plaintiff are no defense unless the act was the sole cause of the injury.

Mr. Briggs: Will the court extend that instruction so as to say that this question of rules may be taken into consideration by the jury in determining whether the defective draw-bar was the proximate cause of the accident?

Cout: I don't believe that is the law as laid down by our Supreme Court.

Mr. Briggs: The court understands that our
538 contention is that the defective draw-bar was not the proximate cause of the accident, and therefore that this rule should be taken into consideration of what that proximate cause was.

Court: Forms of verdict will be supplied you, one in which you will find for the plaintiff, and the other in which you will find for the defendant. If you find for the plaintiff you will insert as damages, if you find damages on both points that have been asked, you will divide your verdict, so that
539 if you find damages for the contribution that she would receive, put that down to damages for the contribution, and if you find damages for pain and suffering, put down the amount you find and write after it, "for pain and suffering." Thus we will be able to determine what the amount of each is that you arrive at.

Our statute provides that in cases of this kind a five-sixths jury may render a verdict, that is, 10 out of the 12 under certain conditions. I will
540 simply read the statute to you:

"In all civil actions or proceedings in any court of record of this state after twelve hours' deliberation the agreement of five-sixths of any jury therein shall be sufficient and valid verdict. The deliberation of the jury shall be deemed to have commenced when the officer taking charge of the jury has been sworn. Where the verdict is agreed to by the full membership of the jury, the foreman only shall sign the verdict; when less than the full number agree on a verdict the same shall be signed

by all the jurors who concur therein." If you have only the one signature of the foreman, will you 541
be careful that he signs his name over the word "Foreman," or write the name "Foreman" under your name.

Whereupon the jury retired for deliberation.

Mr. Briggs: Counsel (Mr. Davis) in his argument said that that item alone entitles her to $10,000 for pain and suffering, or words substantially like that. And then he again used the language, "according to the evidence which I believe makes $10,000 for pain and suffering." I except to 542
those two remarks.

Mr. Davis: We object to the exception now; no exception was taken at the time the argument was made, or the matter called to the attention of the court or counsel for plaintiff, and no exception was taken at that time.

VERDICT. 543

After due deliberation the jury returned a verdict for the plaintiff and assessed the damages at $25,000, of which $5,000 was for pain and suffering, and $20,000 for contribution.

A stay of 50 days was ordered by consent of parties.

544 EXHIBITS.

Plaintiff's Exhibit A was a photograph, withdrawn, not introduced. Exhibit B is a photograph of deceased.

DEFENDANT'S EXHIBITS.

Defendant's Exhibits 1 to 25 are 25-pay-checks of deceased E. L. Ring, dated approximately every
545 two weeks from October 15, 1921, to October 16, 1923, and are, in their order, of the following amounts:

$94.39	$32.30
82.12	62.27
84.22	91.97
57.03	77.73
80.46	74.59
80.77	92.38
84.45	69.22
546 94.98	38.93
51.56	49.28
81.18	86.82
98.96	84.45
96.54	103.53
	28.27
$986.66	$891.74

Defendant's Exhibit 26 is the Book of Rules, and 547
the two sections introduced in evidence are No. 707, read into the record on page 64 of this transcript, and No. 703, on page 67.

(Title of Cause)

NOTICE OF PROPOSED SETTLED CASE.

548

Please take notice, that the above named defendant, Chicago Great Western Railroad Company, proposes the attached transcript as and for the settled case in this action.

BRIGGS, WEYL & BRIGGS,
Attorneys for Defendant,
915 Merchants Bank Bldg.,
Saint Paul, Minnesota.

To Davis & Michel, Minneapolis, Minn., Attorneys for Plaintiff.

549

Due and personal service of foregoing notice and attached transcript by receipt of a copy thereof, is hereby admitted at Minneapolis, Minnesota, this .....day of July, 1923.

DAVIS & MICHEL,
Attoneys for Plaintiff.

(Title of Cause.)

550

STIPULATION SETTLING CASE.

It is stipulated by and between the parties to the above entitled action that the foregoing proposed case may be signed, settled and allowed as a settled case in said action and that the same contains all of the evidence received upon the trial of said cause, all offers of testimony, objections, rulings and exceptions, charge of the Court and verdict and the Court is requested to allow the same as

551 the settled case herein.

It is further stipulated and agreed that all original exhibits offered and received in evidence may be used and referred to by either party and by the Court, the same as if fully set out in the settled case and in the event of appeal to the Supreme Court, such original exhibits shall be handed to the Clerk of District Court by the party in whose possession they are in order that they may be returned by said Clerk to the Supreme Court for use

552 therein, the same as if fully set forth in said settled case.

It is further stipulated and agreed that the stay hereinbefore entered in this action may be extended to September 1, 1923.

Dated August ....., 1923.

DAVIS & MICHEL,
Attoneys for Plaintiff.
BRIGGS, WEYL & BRIGGS,
Attorneys for Defendant.

(Title of Cause.) 553

ORDER SETTLING CASE.

The foregoing having been examined by the undersigned, the Judge before whom said cause was tried, and the same having been found to be true and to contain all of the evidence received and all offers of testimony, motions, requests, objections, rulings, exceptions, charge of the Court and verdict of the jury, and the same being conformable to the truth, it is allowed as a settled case herein. 554

Dated August ....., 1923.

HAROLD BAKER,
District Judge.

(Title of Cause.)

ALTERNATIVE MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT, OR FOR NEW TRIAL.

To Davis & Michel, Esqs., Attorneys for Plaintiff, 555
Minneapolis, Minnesota.

Sir:

You will please take notice, that at the office of Hon. Harold Baker, Judge of the District Court in and for the County of Yellow Medicine, State of Minnesota, in the City of Renville in said State, on the 19th day of September, 1923, at 2 o'clock P. M. or as soon thereafter as counsel can be heard, a motion will be made on behalf of the defendant

in the above entitled action for an Order for Judg-
556 ment in favor of defendant and against the plaintiff, notwithstanding the verdict; and if such Order for Judgment shall not be granted, then in that case that an order be made granting a new trial in said action.

Said motion will be based upon the pleadings, files, settled case, exhibits and proceedings had herein, and will be made on the following grounds:

1. Said verdict is not justified by the evidence and is contrary to law.

557

2. That the Court erred in denying the motion of the defendant that a verdict be directed in its favor at the conclusion of the testimony.

3. The Court erred in charging the jury as follows and defendant excepts thereto, viz:

"The railroad company, is made negligent as a matter of law in having a defective coupler; also, the fact that they were going to move the same on the track wouldn't be material at this time, or when this accident occurred."

558 Page 132 of Transcript.

4. The Court erred in charging the jury as follows, and defendant excepts thereto, viz:

"It is not disputed that at the time of the injury to Ring, defendant was moving and hauling a certain car, the coupler and drawbar of which was defective." Page 132 of Transcript.

5. The Court erred in charging the jury as follows, and defendant excepts thereto, viz:

"If you find that this coupler and drawbar

was in fact defective, then the question for you to determine is whether or not this defect contributed in whole or in part as a proximate cause to the injury and death of Edmund Ludwig Ring." Page 133 of Transcript. 559

6. The Court erred in charging the jury as follows, and defendant excepts thereto, viz:

"If you find that because of the defect deceased did go between the ends of the cars and did attempt to make the uncoupling, then you would determine whether or not the defect was the proximate cause of decedent's injury and death." Page 134, at bottom of page. 560

7. The Court erred in charging the jury as follows, and defendant excepts thereto, viz:

"If you find from the evidence that the coupler was defective and that such defect was the proximate cause of the injury to decedent, then the plaintiff is entitled to recover." Page 135.

8. The Court erred in charging the jury as follows, and defendant excepts thereto, viz:

"Moreover, under the law which I have given you, you cannot consider for any purpose the question of whether or not decedent was himself careless or guilty of contributory negligence. Even if you should find that he was careless and that some act of his contributed to his injury this would not prevent recovery under the laws to which I have referred unless you should find from the evidence that the decedent's act or acts constituted the sole cause of the injury, and that defendant's act in moving or hauling the defective car was no part of the causation." Page 135, at bottom of page. 561

9. The Court erred in charging the jury as fol-
562 lows, and defendant excepts thereto, viz:

"Plaintiff has asked me to instruct you that the fact that the company had rules, which rules are in evidence, and that the decedent violated those rules, would not be a defense to the company, or defendant. That, I believe, is a correct interpretation of the law, that will not be a defense, the fact that he violated those rules." Page 139 at bottom of page, and Page 140, at top of page.

563 10. The Court erred in refusing defendant's requested instructions as follows, and defendant excepts thereto, viz:

Mr. Briggs: Will the Court extend that instruction so as to say that this question of rules may be taken into consideration by the jury in determining whether the defective drawbar was the proximate cause of the accident?

Court: I don't believe that is the law as laid down by our Supreme Court.

564 11. The Court erred in charging the jury as follows:

"If by the rules as I have given them to you you reach the conclusion that plaintiff is entitled to recover, the next question for you to determine is the amount of damages to be allowed to the plaintiff. Under the law, if in this case plaintiff is entitled to recover, then plaintiff is entitled to recover such damages as you believe from the evidence will fairly and reasonably compensate the surviving widow and child for the actual monetary loss they

have sustained. In arriving at that sum you have a right to take into consideration the earning capacity of the decedent and the amount he contributed to such widow and child for their support, care and maintenance. You should first determine what amount he did so contribute; you will then determine from all the testimony about how long such contribution would have continued. Evidence has been introduced in this case to show the normal expectancy of the life of a person 28 years old. This evidence should be considered by you in determining the question, but it isn't necessarily conclusive. A person might live long beyond the period of his normal expectancy or he might die long before such time. It is for you to determine from the evidence the length of time that the decedent would have lived and contributed to the support of the surviving widow and child. 565 566

When you have determined that, and you have determined the amount of the annual contribution of the decedent to his widow and child, you will reduce these contributions to their present value. The present value is such sum which if put at interest at a fair rate would produce for the period of the expectancy the amount of his contribution annually, and with the last payment both the principal sum and the interest will be exhausted. In other words, if for example the contribution were one dollar a year for a period of ten years, the jury would find what sum if put out at a reasonable rate of interest would produce one dollar a year for ten years and with the last payment both the principal sum and the interest would be exhausted. 567

Evidence has been introduced in this case
568 showing the present worth of one dollar per year for different periods. This evidence may be considered by you in arriving at the present rate of contribution of decedent, if you come to the question of the damages to be awarded in this case. In considering the question of damages you may take into consideration the evidence which has been introduced upon this question; you are to determine from the evidence what is a reasonable rate of interest as a return for money safely invested.

After you determine these questions you are
569 to reduce the amount of the annual contributions to its present value under the rules as I have given them to you, and this sum should represent your verdict in this case, if you find in favor of the plaintiff. Now, in regard to the tables that were introduced, that is, the mortality tables and the table as to the present value of a dollar, and so forth, I wish to say that the so-called mortality tables as well as the tables showing the present value of a dollar have been offered in evidence in this
570 case. These are not conclusive or binding on you, but are for your consideration in case you should find for the plaintiff.

In finding the amount to which plaintiff is entitled to recover, you should in this case as in all others use your best judgment, based on your experience, and render a verdict of such an amount as will compensate the plaintiff for the financial loss and suffering, no more and no less.

Plaintiff also claims damages for the pain and suffering of decedent between the time

of the injury and his death. I shall not refer or comment upon the evidence in this case as to what this pain and suffering may have been. You have heard the evidence here by the witnesses upon the question of this pain and suffering, and it is for you to determine from all the evidence to what extent decedent suffered as a result of this injury. You are at liberty to take into consideration the pain and suffering endured that you so find, and award such damages as you may think proper and right, not to exceed the sum of $15,000 as alleged in the complaint." 571

572

Defendant excepts thereto on the ground that the instruction was misleading and prejudicial to defendant in that the jury was not instructed to take into consideration the issue of contributory negligence in mitigation of damages, and that the Court thereby erroneously charged on the issue of damages.

12. That the damages are excessive, appearing to have been given under the influence of passion and prejudice. 573

BRIGGS, WEYL & BRIGGS,
Attoneys for Defendant,
915 Merchants Bank Bldg.,
Saint Paul, Minnesota.

(Title of Cause.)

574

ORDER DENYING MOTION.

The above entitled matter came on to be heard on the 19th day of September, 1923, on motion of the attorneys for the defendant for an order for judgment in favor of defendant and against the plaintiff, notwithstanding the verdict and if such order for judgment shall not be granted, then in that case that an order be made granting a new trial in said action, said Motions being based upon
575 the pleadings, files, settled case, exhibits and proceedings had herein:

Messrs. Briggs, Weyl & Briggs appearing for defendant and Messrs. Davis & Michel appearing for plaintiff;

The Court having heard the arguments of counsel and being fully advised in the premises and from the files and records herein, is impeled to the conclusion that defendant's Motions should be denied, Now therefore;

576 It is Hereby Ordered, That defendant's motion for an order for judgment in favor of defendant and against the plaintiff, notwithstanding the verdict; and if such order for judgment shall not be granted, then in that case that an order be made granting a new trial in said action, be and the same hereby is in all things denied.

Dated at Renville, Minnesota, this 15th day of October 1923.

HAROLD BAKER,
Judge.

577

(Title of Cause.)

NOTICE OF APPEAL.

To Davis & Michel, attorneys for the above named plaintiff, and to Alvin Landru, Clerk of said District Court:

Please Take Notice, That the above named defendant appeals to the Supreme Court of the State of Minnesota, from the Order of the said District Court entered herein, on the 15th day of October A. D. 1923, denying defendant's motion for judgment notwithstanding the verdict, or for a new trial and from the whole thereof. 578

Dated this 30th day of October A. D. 1923.

BRIGGS, WEYL & BRIGGS,

Attorneys for Defendant.

579

580 (Title of Cause.)

UNDERTAKING.

Whereas, The above entitled action duly came on for hearing before the above named court on motion of the defendant for judgment notwithstanding the verdict, or for new trial, and

Whereas, The said court duly over-ruled said motion by its order, and

Whereas, Defendant has served Notice of Appeal
581 from said order,

Now, Therefore, The National Surety Company does hereby undertake, promise and agree to and with plaintiff that said defendant shall well and truly prosecute said appeal with effect and that it will pay all costs and damages that may be sustained by the plaintiff by reason of this appeal, not to exceed, however the sum of Thirty Thousand Dollars, ($30,000.00).

In Witness Whereof, the National Surety Com-
582 pany has caused this instrument to be executed this day of October, 1923.

NATIONAL SURETY COMPANY,

By L. A. GREEN,

Its Attorney-in-fact.

In Presence of:

G. E. Johnson.

M. Frederickson.

583

STATE OF MINNESOTA,

County of Ramsey, ss.

On this 30th day of October A. D. 1923, before me appeared L. A. Green, to me personally known, who being by me duly sworn, did say that he is the attorney-in-fact of the National Surety Company, the corporation described in and who executed the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of 584
said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said L. A. Green, acknowledged said instrument to be free act and deed of said corporation.

G. E. JOHNSON,

(Notarial Seal) Notary Public,

Ramsey County, Minnesota.

My Commission Expires Sept. 20, 1924.

585

586

PROCEEDINGS IN SUPREME COURT.

Printed record filed Jan. 5, 1924.

Appellant's brief filed Jan. 5, 1924.

Respondent's brief filed Jan. 21, 1924.

Cause argued by counsel and submitted March 19, 1924.

April 17, 1924, opinion and syllabus filed, Wilson, C. J., as follows:

587

SYLLABUS.

An interstate train in the act of taking a siding to meet a train, separated because a draw-bar pulled out. A chain coupling was made to get the train off the main line. The decedent, a brakeman, with the conductor, undertook to unhook the chain to uncouple the train from the defective car. The head brakeman uncoupled the engine and the train was caused to move backward. He then caused the brakes to be applied on the cars ahead
588 of the defective car. When the train moved backward decedent locked his arms about the axles of the defective car and swung his body over the chain and when the front part of the train stopped, the chain became taut and squeezed decedent's body against the car above him causing injuries from which he died fifteen days later. Verdict for $5,000 for pain and suffering and $20,000 for loss from death. Held:

(1) That there was no break in the chain of events between the pulling out of the draw-bar and the injury and that the facts bring the case within the provisions of the Safety Appliance Act. 589

(2) a. The defective draw-bar was a proximate cause of the injury.

b. In a case based upon Federal Safety Appliance Act it is not necessary to prove negligence. A disregard of the statute is a wrongful act, and where it results in damage to one of the class for whose benefit the statute was enacted, the right to recover the damages from the party in default, is implied. 590

(3) a. Contributory negligence not a defense.

b. Whether a violation of rules, which were in evidence, was the proximate cause of decedent's injury, was sufficiently covered by a general charge, and defendant was not entitled to a specific charge in reference thereto.

c. Before a violation of rules could avail defendant any aid it would have to constitute the sole proximate cause of the injury. 591

Various assignments of error as to the charge to the jury without merit.

Damages not excessive.

592 OPINION.

This is an action to recover damages for pain and suffering and also damages for the death of one Ring, who was employed by defendant as a brakeman, at the time he sustained injuries from which he died. The deceased was working on an interstate train which, on arriving at Budd, Iowa, undertook to take a siding and meet an east-bound train. The switch was thrown and in starting the train to pass on to the sidetrack a draw-bar pulled
593 out, permitting the train to separate. The crew consisted of the conductor, decedent, another brakeman and the engine men. The train was backed up to the cars which had broken loose. The front car of the portion of the train which had broken loose was coupled with a chain hooked on its front axles with the car ahead so as to pull the rear part of the train off of the main line onto the siding. Decedent under direction of the conductor aided in this work. The train was pulled onto the
594 sidetrack and brought to a stand still. The plan was to switch the defective car out of the train. This was in the night time. The conductor asked decedent if he could unhook the chain and he replied that he did not know, but, set his lantern down, and, tried and replied that he could not do it. Then the conductor tried it. The chain was heavy and one man could not handle it. Decedent got on the other side of the chain and reached down to lift up the chain to give the slack to the

conductor so he could unhook the chain. The brakeman Quist uncoupled the engine from the 595
train for the purpose of permitting it to go out on the main track and to the rear of the train so as to get that part of the train back of the defective car and when this uncoupling was made the disconnected portion having the air brakes released and perhaps started by the movement of the engine, moved back, but Quist caused the air to be applied and thereby stopped the movement. The train backed up without warning and the conductor straightened up and walked back with the 596
movement of the train. The decedent, however, reached in and locked his arms around the axle of the bad order car and the chain at the time was slack and was not unhooked, and he swung his body up over the chain, apparently to ride thereon in the brief movement of the train, and the slack ran back—by the head cars stopping—and as the chain was pulled straight, it squeezed the body of decedent between the chain, then under him, and the bottom of the draft timbers of the car above 597
him. This so injured decedent that he suffered severe pain until his death, fifteen days later.

This action was brought by the administrator of decedent's estate to recover for the benefit of the widow and child of decedent. A verdict was rendered for $25,000, of which $5,000 was for pain and suffering, and $20,000 for loss from death. Defendant has appealed from an order denying its alternative motion for judgment notwithstanding the verdict or for a new trial.

The defendant claims that the facts do not bring
598 the case within the safety appliance act; that the defective draw-bar did not proximately contribute to the injury; that the question of decedent's violation of rules should have been submitted to the jury; that errors occurred in the charge to the jury; and that damages are excesive.

1. Do the facts bring this case within the provisions of the Safety Appliance Act? The defendant asserts that nothing happened while this car was chained up and hauled on to the side track,
599 and that it there came to rest, and that it at that instant ceased to be "used" by the carrier. It attempts to put this defective car in the status of the car in McCalmont v. Penn. Ry., 273 Fed. 231, affirmed 283 Fed. 736, wherein a car was placed on a dead track where an employee was later injured. In this case the defective car was not yet placed to be left and in fact the equipment, the chain, used to replace the defective coupling, was still intact and the car remained in the train of
600 which it was a part. There was here no break in the chain of events between the pulling out of the draw-bar and the injury. Defendant argues that on the theory of the plaintiff, if the defendant would haul the car, it would violate the act, and if it did not haul it, it violated the act. Such is not the case. If defendant hauled the car in use, knowing it was defective, it would be subject to a penalty. It had the right, however, to haul the car to a repair track without incurring a penalty, but such movement should, notwithstanding, be at

the sole risk of the carrier. Clearly the facts bring this case within the Safety Appliance Act. Otos 601
v. Great Northern Ry. Co., 128 Minn. 283; 150 N. W. 922; 239 U. S. 349; San Antonio & A. P R. Co. v. Wagner, 241 U. S. 476; Goneau v. M. St. P. & S. S. M. Ry. Co., ... Minn. ....., 191 N W. 279; Frye v. C. R. I. & P. Ry. Co., ... Minn. ....., 195 N. W. 629.

2. That the defective draw-bar did proximately contribute to the injury is clearly established. As above indicated, the unbroken chain of events, from the moment the car became defective until 602
the accident happened; the circumstances, the character of the injury, and the happening thereof, all lead to the irrepressible conclusion that the defective draw-bar was a proximate cause of the injury.

The jury necessarily found, under the instructions of the court, that the defect was the proximate cause of the injury. This conclusion is inevitable as that was a condition of plaintiff's right to recover. 603

Defendant says that there is no proof of negligence. In a case based upon the Federal Safety Appliance Act it is not necessary to prove negligence. A disregard of the statute is a wrongful act, and where it results in damage to one of the class for whose benefit the statute was enacted, the right to recover the damages from the party in default is implied. The question of negligence in the general sense of want of care is immaterial. The violation of the statute is to be treated as neg-

ligence. San Antonio & A. Pass. Ry. Co. v. Wag-
604 ner, 241 U. S. 476; Texas & Pac. Ry. Co. v. Rigsby, 241 U. S. 43.

3. It is urged that the courts should have given specific instructions as to rules of the defendant as touching upon the question of proximate cause. These rules are in evidence and are as follows:

> "No. 707. Employes must not assume that signals given an engineman have been seen and will be obeyed when obedience to those signals on the part of the engineman is essen-
> 605 tial to the safety of such employes in the performance of their duties. They must know that the signal has been seen, understood and obeyed, before placing themselves in a dangerous position, otherwise they assume all risks of danger arising from any misunderstanding or disregard of signals."
>
> "No. 763. Persons accepting service will be deemed to have full knowledge of the dangers and risks incident to the service. They agree to exercise due care in the performance of their duties to prevent accident to themselves
> 606 or others, and, before using them, to see that the machinery, tools, appliances and materials are in a safe condition to perform the service required."

If decedent violated the rules and in that respect was guilty of negligence, himself, which contributed to the injury, that fact would not bar a recovery. Sec. 3, Act of April 22, 1908, 35 Stat. at L. p. 65, ch. 149; Fletcher v. S. D. Cent. Ry. Co., 155 N. W. 3; Grand Trunk v. Lindsay, 233 U. S. 42. Defendant, however, claims that the violation of

the rules by decedent was so flagrant as to constitute the proximate cause of the injury. It is 607
claimed that the defective car furnished the occasion for the act of decedent and that his act was the cause of the injury without the first act, having the defective car, in any manner being a contributing cause of the injury. An effort is made to put this case in the class with G. N. Ry. Co. v. Wiles, 240 U. S. 444. Wiles v. G. N. Ry. Co., 125 Minn. 348. They are not alike. The Wiles case does not control this case; but the Otos case is more persuasive. 608

The rules being in evidence, the defendant had a perfect right to argue to the jury, as it doubtless did, its present claim of the decedent being guilty of such conduct as to constitute the proximate cause and under the general charge the jury would necessarily consider the facts and circumstances upon which defendant sought specific instructions. Such instructions are not to be encouraged when so well covered by the general charge. Watson v. Mpls. St. Ry. Co., 53 Minn. 557. Before this con- 609
duct on the part of decedent could avail the defendant any aid, it would have to constitute the sole proximate cause of the injury. The evidence is not such as to lead us to the conclusion that there was any chance for error in reference to the elements here under consideration.

The assignment of error number ten in this case relative to instructions as to the violation of the rules, is much the same as assignment of error

number fifteen in the Otos case wherein and in
610 reference to which this court said:

"Defendant contends that the proximate cause of plaintiff's injury was not the defective condition of the coupling, but his violation of a rule of the employer forbidding employees going between moving cars. It appears that there was such a rule. There is evidence that in this yard, it had, with the knowledge of the yardmaster, been more honored in its breach than in its observance. But, whatever may be said of the propriety of plaintiff's act in going between the cars, it was only
611 one of the concurring causes of plaintiff's injury. The violation of the statute was one cause of his injury. Turrittin v. Chicago, etc., 95 Minn. 408; 104 N. W. 225; Sprague v. Wisconsin, 104 Minn. 58; 116 N. W. 104. This is all that is necessary to create liability. The statute which abolishes contributory negligence 'would be nullified by calling plaintiff's act the proximate cause, and then defeating him, when he could not be defeated by calling his act contributory negli-
612 gence. * * * It is only when plaintiff's act is the sole cause—when defendant's act is no part of the causation—that defendant is free from liability under the act.' Grand Trunk v. Lindsay, 233 U. S. 42, 34 Sup. Ct. 581, 58 L. Ed. 838, Ann. Cas. 1914 C, 168, quoting 201 Fed. 844, 120 C. C. A. 166."

After this draw pulled out there was not any new intervening cause of itself sufficient to stand as the cause of the injury. If there was such, then the original act, the defective car, would be too remote. The defendant's claim that the violation

of the rules would be such, cannot be sustained and the court was right in not specifically charg- 613
ing the jury in reference to a violation of the rules. The general charge precluded a recovery by plaintiff unless the defective car was the proximate cause of the injury, and this was all to which defendant was entitled.

4. We have carefully considered the various assignments of error as to the charge to the jury but do not find that any of them are of substantial merit.

5. Was the damages excessive? Defendant in- 614
vokes the case of Nash v. M. & St. L. Ry., 131 Minn. 167, and the plaintiff cites Clark v. Davis, 153 Minn. 143 and St. Louis I. M. & So. R. Co. vs. Craft, 237 U. S. 648. Upon a consideration of the evidence in this case, and the authorities applicable we approve the verdict.

Order affirmed.

615

April 21st, 1924, costs taxed and judgment entered therefor as follows:

Statutory costs,	$25.00
Printing brief,	16.50
	$41.50

April 30th, 1924, Remittitur made.

MANDATE.

616

STATE OF MINNESOTA,

Supreme Court. ss.

The State of Minnesota to the Honorable Judge and Officers of the District Court within and for the County of Yellow Medicine, Greetings:

Whereas, lately in your Court, in an action therein pending, entitled A. D. Schendel, as Special Administrator of the Estate of Edmund L. Ring, deceased, plaintiff, and Chicago Great Western Railroad, defendant, a certain order was entered therein Oct. 15th, 1923, from which action of your Court an appeal thereafter was taken to this Court;

617

And Whereas, the said cause came on to be heard before our Supreme Court, and was argued by counsel;

On Consideration Whereof, it is now here ordered and adjudged by this Court that the order of the Court below herein appealed from, be, and the same hereby is, in all things, affirmed, and that judgment be entered accordingly. A copy of the entry of judgment thereupon in this Court is herewith transmitted and made part of this Remittitur.

618

Now, Therefore, this Mandate is to you directed and certified, to inform you of these proceedings had in our Supreme Court, in said hereinbefore mentioned cause, and the same is hereby and herewith Remanded to your Court for such other or

future record and proceedings therein as may be by law necessary, just and proper, under and by 619
virtue of the said order herein made.

Witness, The Honorable Samuel B. Wilson, Chief Justice of the Supreme Court aforesaid, and the seal of said Court at St. Paul, this April 30th, 1924.

GRACE F. KAERCHER,
(Seal) Clerk of the Supreme Court.
By PETER O. SCOW, Deputy.

620

May 2, 1924, the following stipulation was made with regard to entry of judgment in the District Court:

(Title of Cause.)

It Is Hereby Stipulated by and between the parties to the above entitled action, that

Whereas, the order of the District Court denying defendant's motion for judgment notwith- 621
standing the verdict or in the alternative for new trial, has been affirmed by the Supreme Court of Minnesota, and

Whereas, the verdict in said action was for the sum of $25,000.00.

It Is Stipulated that the defendant shall and does hereby waive all notice of taxation of costs in the District Court in said action and all notice of the entry of judgment therein, and that the taxable costs of the plaintiff in said action amount

to $161.37, and that the interest on said verdict
622 to May 2nd, 1924, amounts to $1,286.43.

Dated this 2nd day of May, 1924.

DAVIS & MICHEL
and E. S. CARY,
Respondent's Attorneys.
BRIGGS, WEYL & BRIGGS,
Appellant's Attorneys.

May 8th, 1924, Judgment entered.

623

(Title of Cause.)

JUDGMENT, MAY 8, 1924.

This cause having been regularly placed upon the calendar of the above named court for the June, A. D. 1923, General Term thereof, came on for trial before the Court and a jury duly empanelled and sworn to try the same on the 21 day of June, A. D. 1923, which said jury did on the
624 22 day of June, A. D. 1923, duly render a verdict herein in favor of said plaintiff.

Now, pursuant to said verdict and stipulation and on motion of Davis & Michel and E. S. Cary, attorneys for plaintiff, it is hereby adjudged that the plaintiff recover of the defendant and each of them the sum of twenty-six thousand two hundred eighty-six and 43/100 dollars, the amount of said verdict, stipulation and interest to May 2, 1924, together with one hundred and one and 37/100

dollars, costs and disbursements, as taxed and allowed, amounting in all to the sum of twenty-six thousand three hundred eighty-seven and 80/100 dollars. 625

By the Court:

CHAS. J. CLARK,
Clerk of District Court.

May 9th, 1924, Notice of Appeal served and filed, and bond approved.

626

(Title of Cause.)

NOTICE OF APPEAL.

To Davis & Michel, Esqs., Attorneys for the above named plaintiff, and to Charles J. Clark, Esq., Clerk of said District Court:

Please take notice that the above named defendant, Chicago Great Western Railroad Company appeals to the Supreme Court of the State of Minnesota from the judgment of the said District Court entered herein, on the 8th day of May, A. D. 1924, in the sum of twenty-six thousand three-hundred eighty-seven dollars eighty cents ($26,387.80) in favor of plaintiff and against defendant, and from the whole thereof. 627

Dated this 9th day of May, A. D. 1924.

BRIGGS, WEYL & BRIGGS,
Attorneys for Defendant,
915 Merchants Bank Bldg.,
St. Paul, Minn.

628 (Title of Cause.)

UNDERTAKING.

Whereas, judgment in the above entitled cause was entered on the 8th day of May, 1924, in favor of plaintiff and against defendant in the sum of twenty-six thousand three hundred eighty-seven dollars eighty cents ($26,387.80), and

Whereas, said defendants have served notice of appeal from said judgment,

629 Now, therefore, the National Surety Company does hereby undertake, promise and agree to and with the plaintiff that said defendants shall well and truly prosecute said appeal with effect; that it will pay all costs, charges and damages that may be sustained by the plaintiff in consequence thereof if the said judgment or any part thereof be affirmed, and to abide and satisfy the judgment which the appellate court may direct herein, not to exceed, however, the sum of twenty-eight thou-
630 sand dollars ($28,000.00).

In Witness Whereof, the National Surety Company has caused this instrument to be executed this 9th day of May, 1924.

NATIONAL SURETY COMPANY,

By C. M. BEND, (Seal)

Its Attorney-in-Fact.

In Presence of:

G. E. Johnson,

M. Frederickson.

631

STATE OF MINNESOTA,

County of Ramsey. ss.

On this 9th day of May, A. D. 1924, before me appeared C. M. Bend, to me personally known, who being by me duly sworn, did say that he is the attorney-in-fact of the National Surety Company, the corporation described in and who executed the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said C. M. Bend acknowledged said instrument to be the free act and deed of said corporation.

632

G. E. JOHNSON,

(Seal) Notary Public,

Ramsey County, Minnesota.

My commission expires Sept. 28, 1924.

The foregoing surety and bond approved this 9th day of May, 1924.

633

HAROLD BAKER,

Judge.

634 May 8th, 1924, the following stipulation with regard to the appeal was made:

(Title of Cause.)

STIPULATION.

It Is Hereby Stipulated by and between the parties to the above entitled action that the appeal now pending herein in this court, same being an appeal by defendant from Final Judgment entered May 8th, 1924, in the District Court of Yellow Medicine county, Twelfth Judicial District of Minnesota, in favor of plaintiff and against defendant in the sum of $26,387.80 may be, and is hereby submitted to the Supreme Court of Minnesota for its decision, without argument, upon the printed record, briefs of the parties and other proceedings had and taken in that certain action entitled A. D. Schendel, as Special Administrator of the Estate of Edmund Ludwig Ring, Deceased, Respondent, vs. Chicago Great Western Railroad Company, Appellant, numbered 23898 upon the files and records of said Supreme Court and being an appeal in this same cause from the order of said District Court of Yellow Medicine county denying defendant's alternative motion for judgment notwithstanding the verdict or a new trial.

635

636

It Is Further Stipulated that the Record of this cause need not be printed by defendant-appellant upon this appeal and that no briefs need be filed

by either party; the printing of such Record and the making and filing of such briefs being hereby 637
expressly waived.

It Is Further Stipulated that if said judgment of said District Court be affirmed, there be no remittitur to said District Court; the purpose of this Stipulation being that if said judgment be affirmed final judgment may be entered thereon in this Court; but nothing herein shall be construed as a consent by defendant to the entry of any judgment against it or as a waiver of its assignments of error in the entry of any judgment; de- 638
fendant expressly reserving and claiming the right to have all questions arising in the entry of said judgment and proceedings prior thereto reveiwed by the Federal Supreme Court if said Court shall grant a Writ of Certiorari upon defendant's petition therefor.

Dated May 8th, 1924.

DAVIS & MICHEL
and E. S. CARY,
Attorneys for Respondent. 639
BRIGGS, WEYL & BRIGGS,
Attorneys for Appellant.

640 May 20, 1924, opinion filed, per curiam, as follows:

(Title of Cause.)

PER CURIAM.

This is an appeal by the defendant from a judgment of the District Court of Yellow Medicine county, State of Minnesota, entered in favor of plaintiff and against defendant in an action
641 brought by the plaintiff, A. D. Schendel, as special administrator of the estate of Edmund Ludwig Ring, deceased, to recover damages because of pain suffered by decedent, from the injuries complained of, before his death, and because of damages and loss suffered because of the death of the decedent resulting from such injuries. The action is based upon two acts of Congress, one known as the Employees' Liability Law and the other known as the Federal Safety Appliance Act. The questions
642 presented are those decided by this court on an appeal by the defendant from an order denying the defendant's motion for judgment notwithstanding the verdict or for a new trial which decision of this court was filed in this court April 17, 1924. Following the decision in that case the judgment hereinbefore referred to is affirmed.

Judgment affirmed.

May 21st, 1924, Petition presented and order for stay granted. 643

(Title of Cause.)

PETITION FOR STAY.

To the Honorable the Supreme Court of Minnesota: Defendant and appellant in the above entitled action most respectfully represents:

That it feels itself aggrieved by the decision and order for judgment of this Court herein confirming the judgment of the Court below and ordering 644
the entry of final judgment in this court.

That defendant and appellant does therefore, desire in good faith to petition the Supreme Court of the United States for a writ of certiorari to review the final judgment of the Court when entered and will use all due diligence to submit its petition and the record herein as soon as it is reasonably possible.

Wherefore defendant and appellant prays the order of this Court staying all proceedings herein 645
during the pendency of its application and petition to the Supreme Court of the United States for a writ of certiorari.

Dated May 21, 1924.

CHICAGO GREAT WESTERN RAILROAD COMPANY,

By A. G. BRIGGS,

Attorney.

646

(Title of Cause.)

ORDER.

Upon application of the defendant and appellant in the above entitled action.

It Is Ordered, that upon and after the entry of final judgment herein as directed by the Court in its decision and order entered and filed on the
647 20th day of May, 1924, all proceedings herein and in the District Court of Yellow Medicine county, Minnesota, including the issuance of any writ of execution out of either Court, be and hereby are in all things stayed pending the petition for writ of certiorari to the Supreme Court of the United States and proceedings had thereon.

S. B. WILSON,
Chief Justice,
Supreme Court of Minnesota.

648

May 24, 1924, Principal, costs and disbursements taxed $26,482.24. 649

(Title of Cause.)

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the Judgment of the court below, herein appealed from, to-wit, of the District Court within and for the County of Yellow Medicine, be and the same hereby is in all things affirmed. 650

And it is further determined and adjudged that respondent herein, do have and recover of appellant herein the sum and amount of twenty-six thousand four hundred eighty-two and 24/100 dollars ($26,482.24) costs and disbursements in this cause in this court, and that execution may be issued for the enforcement thereof.

Dated and signed May 24, 1924.

By the Court.

Attest: GRACE F. KAERCHER, 651
Clerk.

STATEMENT FOR JUDGMENT.

Statutory costs	$25.00
Amount of Judgment	26,387.80
Interest from May 8, 1924, to May 24, 1924	69.44
Total	$26,482.24

652

STATE OF MINNESOTA,

Supreme Court. ss.

I, Grace F. Kaercher, Clerk of said Supreme Court, do herely certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said
653 original and that the same is a correct transcript therefrom.

Witness my hand and seal of said Supreme Court at the Capitol, in the City of St. Paul, May 24, A. D. 1924.

GRACE F. KAERCHER,

(Seal) Clerk.

By PETER O. SCOW, Deputy.

Filed May 24, A. D. 1924. Grace F. Kaercher Clerk.
654

IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 192–

No. 1075

CHICAGO GREAT WESTERN RAILWAY COMPANY, Petitioner,

vs.

A. D. SCHENDEL, Special Administrator, etc.

ORDER ALLOWING PETITION FOR CERTIORARI

On Petition for Writ of Certiorari to the Supreme Court of the State of Minnesota

On consideration of the petition for a writ of certiorari herein to the Supreme Court of the State of Minnesota, and of the argument of counsel thereupon had,

It is now here ordered by this Court that the said petition be, and the same is hereby, granted, the record already on file as an exhibit to the petition to stand as a return to the writ.

June 9, 1924.